

Time for Harvest

Women and Constitution Making in Kenya

Wanjiku Mukabi Kabira



University of Nairobi Press

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The Author, Professor Wanjiku Mukabi Kabira, 2012

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Wanjiku Mukabi Kabira



University of Nairobi Press

First published 2012 by

University of Nairobi Press (UONP)

Jomo Kenyatta Memorial Library

University of Nairobi

P.O. Box 30197 – 00100 Nairobi

E-mail: nup@uonbi.ac.ke

www.uonbi.ac.ke/press

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University of Nairobi Library CIP Data

Kabira, Wanjiku Mukabi

Time for Harvest: Women and Constitution Making in Kenya

/W.M. Kabira. – Nairobi: University of Nairobi Press, 2012

464P.

KN 31

.K4K3

1. Constitutional amendments -- Kenya -- women

2. Women -- Civil rights -- Kenya

3. Constitutional law -- Kenya -- Women

4. Women -- Legal status, laws, etc. -- Kenya

I. Title

ISBN 10: 9966-792-10-4

ISBN 13: 978-9966-792-10-5

Printed by:

Colourprint Limited

P.O. Box 4466-00100

Nairobi.

Dedication

This is the story of the
women of this country;
all of you mentioned in this book;
all of you who gave your views on
the kind of constitution you wanted.

Those of you who did not give your views
but wished deep in your hearts
that this country would be better
for women, our children
and for all our people.

You are the nurturers;
the silent gardeners
who tender the crops;
who nurture life;
who continue to water
the seeds of freedom.

This book tells your story;
our story;
and the story
of our struggle for
a new constitutional dispensation.

It is dedicated to you personally
and collectively.

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Foreword

I

Patricia Kameri-Mbote, Professor of Law, School of Law, University of Nairobi, Kenya

Time for Harvest: such a beautiful title for such a beautifully written book! How fitting that Wanjiku Mukabi Kabira should pen the story of the metaphorical “*Wanjiku*”, Kenya’s down to earth, resourceful but often excluded woman.

Wanjiku Kabira is indeed a gifted storyteller but her story is of a different genre. It spans the legal, historical, political, religious, social and cultural realms rendering a mosaic that details important issues in an intellectual but accessible form. Wanjiku’s use of Margaret Ogola’s novel, *The River and the Source* (1994), graphically paints the picture of Women’s Movement in Kenya which has had moments of great force, moments when it only trickled, moments when people thought it had dried up because they did not see it on the surface, and moments when it meandered as it sought the path of least resistance on its onward journey to the sea. The important thing, however, is that, it eventually reached the sea on August 27th 2010.

It is imperative that we endeavour to immortalise the stories told by women in their own words, unmediated by foreign languages and unadulterated by legalese which scholars have averred is male and promotes male values and can affect law’s efficacy to transform the quality of women’s lives (Carol Smart, 1989). We must also salute all those women who have been in the line of duty in different ways, some more visible than others – ‘nurturers and silent gardeners’ – but all contributing to the same cause. As the baton has passed from one group of women to another, the camaraderie is discernible in the invisible networks that women have maintained in support of the cause. The determination of women has seen them through divisive politics, use of ethnicity and social economic classes to create differences in the movement and caricaturing and victimisation of women who have staked their necks out in support for the cause. Professor Kabira tells these stories very deftly, sparing us the pain that was suffered by individual women and their families as they identified with what at times seemed like a mission impossible. They must be the women who, in her words, ‘have names, hearts that ache, eyes that weep, feet that hurt.’

The gallant male warriors in and outside parliament who supported the women’s cause are chronicled in the book. One would have thought that the women’s struggles for inclusion and recognition were a coup against the lawfully established government of men. Yet, these men voiced their opinions with conviction and diligence, providing a voice for the handful women

parliamentarians who could easily be muzzled by the sheer brute force of the male dominated parliament.

A new constitution for Kenya is a cause for celebration even as we monitor the implementation process which promises to present many hurdles. A constitution awash with provisions on gender equality is an even greater cause for celebration for Kenyan women. It is like children getting into the candy store and being told by their parents that they can have all the sweets they want. As the May 6th 2010 Draft of the constitution went through the referendum, there was anxiety that we could yet again miss the bus as we had always done in the past. We triumphed!

The constitution crystallises major gains towards gender equality and equity and in essence, delivers on many issues that have been at the heart of gender and pro-Women's Movements in Kenya from the 1980s. To have such gains in a constitution is no mean feat because the Constitution of the State is an agreement or compact among the people—the consensus amongst the people themselves and their collective wisdom.¹ The Constitution embodies the wishes and aspirations of the country and the framework within which public policies are made and implemented and differences and disputes among the people solved.

The whole process of the Constitutional Review, including the setting up of the Constitution of Kenya Review Commission (CKRC) and the Committee of Experts (CoE) entailed a struggle to ensure gender equality and equity. The exclusion of women from the process of constitution making and from the normative provisions of the constitution in the 1963 Independence Constitution and subsequent revisions thereto has had glaring manifestations. Firstly, women have been largely absent from politics and decision-making bodies in Kenya. Secondly, debates on proposed laws that affect women have been skewed in favour of dominant discourses on what women and men can and should do. In this schematic patriarchy, the rule of the fathers has taken centre stage as it is manifested in different forms of male dominance. Indeed, patriarchy is equated to male domination, a system of socio-cultural and legal relations in which men as a class have power over women as a class. Those power relations are social constructs and are neither biological nor natural. The power can be ideological, social, political and economic.

Prior to 2010, Kenya's Constitution unashamedly validated the subjugation of women and justified it on customary or religious grounds with respect to matters of 'personal law' (marriage, divorce, adoption, inheritance of property and burial). This blanket exemption meant that people could be discriminated against by the application of 'personal laws' without any opportunity to oppose

¹ Y.P Ghai, 'Public Participation and Minorities, Minority Rights Group Report', United Kingdom, (2001) 5. (On file with the authors).

such discrimination. The mention of the Wambui Otieno Case in the book amply demonstrates the effect of this Constitution. Wambui Otieno sought to be granted the right to bury her dead husband in 1987 but she lost the case. Instead, her late husband's clan was granted the right to bury him (Ojwang & Mugambi, 1989; *Daily Nation*, May 1987). The cultural aspect of patriarchy in most cases takes the form of devaluation of women's work or achievements (ascribing these to men with whom they have relationships as fathers, husbands or sons) while the ideological aspect portrays women as natural, biological creatures inherently different but inferior *vis a vis* men (Hanne Petersen, 1994).

Further, women's attempts to ingrain equality in the compact of governance through legislative processes have failed as men use their numbers to buttress 'common wisdom' on relationships between men and women. This is amply demonstrated in the discussions in the book on the Hon. Phoebe Asiyo's Motion on Affirmative Action in 1997 and the second tabling of the Affirmative Action Bill to increase women's representation in electoral bodies in 2000. The quest for 50 seats for women in 2007 is significant in that women went to Parliament seeking a Constitutional Amendment with petitions from around the country and signatures from women from all walks of life. The fact that parliamentarians boycotted the session and thus ensured that there was no quorum to debate the proposed change to the Constitution illustrates the power dynamics in the August house as well as in the author's words 'the contempt with which the 6th, 7th, 8th and 9th parliaments treated women's efforts towards Affirmative Action.'

At the risk of being a party spoiler, I must sound a word of caution as one that grew up on a farm and has watched 'the river flow and meander' for four decades. *Time for Harvest* is not the time to rest on our laurels. This is a time for hard work because change in societal norms and values does not happen overnight. The contestation will extend to the enforcement and implementation of the rights provided for in the Constitution. The struggle on the implementation of article 27 of the Bill of Rights that says: "not more than two thirds of either gender occupies any elective and appointive bodies" points to the hurdles ahead. Legal change as contained in the Constitution, must be accompanied by changes in social, political, cultural and other spheres. Indeed, reform of the law alone will not guarantee women's enjoyment of their rights. We should ensure that we do not stop at enshrining the rights in the Constitution but that the constitutional provisions inform law and practice. Work is, therefore, only just beginning and we need to schedule celebrations to take stock of the harvest in the barns!

The Book

The book is divided into four parts each of which tells its own story.

Part I, entitled *The Path Travelled*, summarises the path that women have travelled to get to the negotiating table and ensure that they would harvest gains for Kenyan women. *Chapter 1* details the background to the harvest – *Clearing the Fields!* It describes Women's Movement and gives a historical context to the 'harvest' at a very early stage. It isolates the rallying of women around the quest for Affirmative Action as its departure-point for watering of the Women's Movement. The chapter illustrates women's resilience in the face of great opposition. The ability of women to rise and stand up after losing, wipe off the dust and move forward comes out clearly.

Chapter 2 is an intriguing story of women's negotiation for participation in the Constitution Review Process (CRP). The diligence of women comes out clearly as they seek to inform themselves of what it means to make a Constitution for Kenya and where they could get into the process. The gains made by women through the Inter Party Parliamentary Group (IPPG) process in 1997 propelled women to a seat at the negotiation table for the law to guide the constitution review process. This provided the space for women to negotiate for Affirmative Action, to ensure representation in the review organs. The diversity of women groups in this process is impressive and points to the common causes of women even as detractors of the Women's Movement have time and again sought to divide women along ethnic, political party, religious and social economic class lines. That a significant and forceful group of women got to the negotiation table demonstrates that women had learnt the ropes of the negotiation and bargaining process in the shark infested waters that are Kenya's politics.

Chapter 3 describes the shifting of gears from a few women at the table to a broader arena at the Bomas of Kenya where more Kenyan women were involved alongside men. In essence, the anxiety of women who appreciated the need to keep the unity and momentum was palpable as women checked into the Conference venue. The Constitution of Kenya Review Commission Draft had delivered many women's issues and meetings held to review the document before it was taken to the conference had generally acknowledged the fact that women had made inroads in key areas. The need to secure these gains called for more women in the line of duty to whom the commissioners would hand over the baton at Bomas as well as continue fanning the flame.

Professor Kabira, as one of those handing over the baton, describes this process eloquently. This was to be the beginning of a rocky patch in the review process not just for women but for the country. The author captures the sites of struggle for women at the Bomas Conference; with parliamentarians; in the 2005 referendum and up to the generation of the Harmonised Draft of the Constitution by the Committee of Experts. She ably takes us through the

processes, side-shows and show-downs along the path, all along keeping the theme of women's participation alive and well. Reading the chapter makes one marvel at the resilience of all the participants in the struggle and hence, the need to remember those who have participated in it in innumerable ways. This, the author does very well through naming groups and individuals that were part of the struggle.

Part II, comprising Chapters 4 and 5, is entitled, *Harvesting Women's Voices*. It takes us through the treacherous, albeit fulfilling and joyous process of collecting views and receiving them in women's voices. In this part, Professor Kabira introduces the various communities that inhabit Kenya. She explains that for many women in these communities, their appearance before the CKRC was the first time they had given views in public. She captures gender-speak and power dynamics competently bringing out how women communicate their views among themselves as women, and when put together with men. She beautifully interjects the narrative literature and descriptions of people giving their views. This softens the message by removing the roughness that gender oppression so often comes with, without diluting the intellectual content. A lawyer or political scientist could write the same story very differently and the rendition would certainly not be the same. The effect of using literary pieces is brilliant as it contextualises women, women's lives, their views and their hopes for a better Kenya within a broader socio-economic fabric.

Divided into eight sub-sections covering the eight provinces (now 47 counties), the author presents a summary of views presented by women from different walks of life and men, highlighting the issues that stood out in the deliberations. The presentation of some of these in verbatim form gives a good sense of what the concerns in different parts of the country were for different women. What is amazing is the coherence and confluence of issues of concern for Kenyan women – from the grassroots to the cities and even from the ivory tower. These issues were not only the ones that directly affected them as women but those that concerned all Kenyans such as the system of governance, national values and principles and allocation of resources across the country.

Apart from constituency hearings covered in these eight sub-sections, women's organisations and women in academia presented their views at other fora. Chapter 5 highlights their views.

Part III is entitled, *Negotiating the Double Covenant*. It details women's negotiations at the Bomas Conference to ensure that the views they had given remained in the draft constitutional documents. *Chapter 6* recapitulates the process leading to the generation of the Constitution of Kenya Review Commission's Draft constitution in 2002 and the convening of the Bomas Conference as the Moi government lost to the National Rainbow Coalition (NARC). It gives details of the delegates at the Conference, particularly women; the strategies engaged by women to lobby and negotiate in the different

committees set up to put together different sections of the Constitution. To their credit, women led some of these committees and also provided skilful, thoughtful and representative views in the groups where they were assigned. They also artfully juggled the balls on different issues by maintaining close networks and feedback loops on what was going on in each committee.

Chapter 7, on the 2005 referendum, is a dark moment in the narrative. It details the politics surrounding the vote and how a few key figures swayed the vote with the majority voting without having read the document. Indeed, as Professor Kabira notes, the vote was not about the draft constitution. The unity forged by women through the process was shattered by ethnic and political alliances illustrating that women were not insulated from broader forces operating in the country at that time. The pain of women who had seen their dream so close to realisation and then slip by cannot be fully explained in words. Professor Kabira's use of quotes from women to describe their feelings is a brilliant way of spreading the pain and having it owned by different people. The pain was shared by different generations of women. The sisterhood in coping with the pain is probably where the strength to pick up the pieces and surge on came from. The ties that bound women together proved stronger than what had kept them apart in 2005 as they came together to contribute to the final push towards a new Constitution detailed as 'The First Season of Harvest' in *Chapter 8*.

Actually, the dream was 'deferred' not shattered. The establishment of the Committee of Experts and the generation of the Harmonised Draft saw women secure most of their gains both in the representation in the Committee as well as in the Harmonised Draft Constitution that was subjected to a referendum on August 4th 2010. The endorsement of the constitution by Kenyans and its subsequent promulgation on August 27th 2010 was a great triumph for Women's Movement in Kenya. Women of Kenya wisely gave politicians a wide berth when the latter attempted to introduce cleavages between them – this time, on religious grounds, having known that many women were devout followers in their respective faiths.

Part IV, appropriately entitled *Reflections*, provides reflections of Professor Kabira on her journey and that of Kenyan women. I am not surprised that she canvasses the issue of ethnicity in constitution-making in *Chapter 9*. Indeed, women's multiple identities play out in the quest for equal rights and it is not possible for women to have greater rights at the national plane than they have in the domestic and local planes. Her rendition is sobering coming at a time when we still wonder how Kenyans could set upon each other with machetes and realise how quiet women were in the entire period despite their suffering individually, as mothers, wives, daughters and sisters. In *Chapter 10*, she explains the strategic choices that women made in seeking to move into the arena from the sidelines. Some of these choices, such as Affirmative Action,

democratic electoral systems, and gender-based violence, had multiplier effects that enabled women to reach sites of struggle that they had not directly picked for engagement. This provides the context for discussions in *Chapter 11*, describing how women emerged from oblivion to spaces where their voices were sought and taken into account. *Chapter 12* concludes a captivating and emotive story that could not have been better told.

Time for Harvest: Women and Constitution Making in Kenya is thus, a very reader friendly and accessible book. Once you start reading it, it engages you fully and you want to know where the river emerges next. Knowing that the river is always there and always moving towards the sea keeps one reading on, even when the circumstances are extremely disheartening – for instance, after the 2005 referendum. It is a must read for students of politics, law, history, sociology, anthropology and even literature who want to know the path travelled by Kenyans, and women specifically, in getting to where we are. I must commend and thank Professor Kabira for immortalizing women's struggles for space at the negotiation table.

II

A Word from Lady Justice Nancy Baraza

Deputy Chief Justice, Kenya

The women of Kenya have walked themselves into first class citizenship and congratulations! From the bleak days of severe marginalisation, days when words such as 'women' or 'affirmative action' were almost taboo in this country, 'Time for Harvest' captivantly traces the women's struggles to change their status, their lives and their entire destiny. It expositis the sheer ingenuity, perseverance and tenacity to contribute to the attainment of an all inclusive constitution that banishes, inter alia, gender discrimination in all spheres of life, including social, economic, cultural, and political spheres. In this way, it opens up massive space for women in this country to 'exhale'. The constitution embraces the progressive values of non-discrimination, equality, equity, and social justice that will guide policy, attitudes and behaviour in Kenya. They will ensure the transformation of the female gender from a hitherto marginalised and oppressed state. Gender discrimination has hitherto been the hallmark of women's lives in this country.

Professor Kabira captures the journey brilliantly. The book tells the story of many great women actors in the struggle and the nature of their contribution. It is a story of how sheer tenacity and versatility in these women beat all odds to realise a new constitutional order. All these actors recognised the importance

of networking and collaboration to ensure women's participation in the entire constitution-making process. Sharply aware that participation would have an impact on the content of the constitution, they left nothing to chance. And indeed, it did. Without women's participation, it is doubtful that the constitution could have captured all the gains for women that we now celebrate.

My special recognition in this entire struggle goes to Professor Kabira. An intelligent and sharp analytic, Professor Kabira was the strategist at very crucial times in the process. While designing the structures that would ensure women's participation in the process at the Constitution of Kenya Review Commission (the Commission that framed the constitution), Professor Kabira employed her intelligence, keen sense of detail and expertise to ensure this goal was realised. When it came to the framing of the constitution, Professor Kabira demonstrated a great sense of detail and alertness to ensure all the provisions that would guard women's concerns were captured. These gains remained intact even in the later harmonisation exercise that ushered in the constitution. I was privileged to have worked with Professor Kabira at this stage and I will forever be grateful to her for her work without which, perhaps these gains would have slipped out of attention.

The book is a manifestation of women's diligence and astuteness that have enabled them walk to freedom and emancipation. It is a great firsthand record of women's struggles into the new dawn. Women can now happily be born in this country.

Acknowledgements

Being part of the Women's Movement in Kenya for thirty years has been a satisfying, enriching and challenging part of my life. I have been at the heart of the movement where we have celebrated, mobilised, agonised, organised, reflected and finally, witnessed the birth of the Second Republic of Kenya where women and other traditionally marginalised groups have found their place in the structures of governance. I am glad that writing this book has given me an opportunity to put down the women's story, as I know it.

It is not possible to acknowledge every one that has contributed to this story. I have talked about many women and men in this book and if the names of all those who took part in the struggle are not here, they should rest assured that they are also part of this book and are also acknowledged.

However, I would most likely not have been so intensively involved if it were not for those who introduced me to the process and with whom I have walked for these many years. Among these is Dr. Eddah Gachukia who, since 1982, has remained my friend and mentor. She is a great educationist, politician and women leader. The other one is Hon. Phoebe Asiyo, former Member of Parliament (MP), and Chair of Caucus for Women's Leadership, a great politician who introduced me to women and political participation. Others are: Hon. Julia Ojiambo, former Minister for Culture, and Chair of the Labour Party of Kenya who has walked with us through thick and thin; Mrs. Catherine Nyamato, a former MP; Mrs. Rose Waruhiu, former nominated MP and former Eastern African Assembly MP; Hon. Zipporah Kittony, former Chair of Maendeleo ya Wanawake; Hon. Charity Ngilu, Chair of the original National Rainbow Coalition (NARC) whose capacity for mobilisation has been impressive; Hon. Beth Mugo who tabled the second affirmative action motion in parliament, Hon. Martha Karua, who took over the Affirmative Action struggle from Hon. Phoebe Asiyo and Hon. Beth Mugo and moved to parliament to battle it out; Mrs. Jane Kiano, former Chair of the Maendeleo ya Wanawake and later its patron. Kiano's energy and capacity for working for women is inexhaustive. Then there is the late Prof. Wangari Maathai whose capacity to sustain the battle single handedly was unparalleled; Prof. Micere Mugo, who though far from Kenya and even when physically unwell, has continued to encourage us and to prevail upon us never to rest until we reach our destination; and the gracious Mrs Kamla Sikand, a board member of Women's Political Alliance, a woman who made her dwelling a home for the women of this country.

After African women lobbied to have the United Nations Women's Conference held in Nairobi, women like Dr. Eddah Gachukia, Mrs Jane Kiano,

Prof. Norah Olembo, Prof. Wangari Maathai, Hon. Phoebe Asiyo, Mrs. Wilkister Onsando, Hon. Julia Ojiambo, Hon. Grace Ogot, Hon. Rose Waruhiu, Mrs. Margaret Mwangola, the late Mrs Rebecca Cheron, the late Mrs Wambui Otieno-Mbugua, Miss Margaret Kenyatta, among others, continued to water the seeds of women's struggle. Some of these women travelled to Mexico in 1975 to make the case for women, organised Non-Governmental UN forum in 1985 in Nairobi, travelled to Beijing in 1995 and nurtured many others to continue planting the seeds and tendering the crops. We acknowledge them and thank them for this commitment.

As women continued walking towards their destination, some may have exited the path; some may have felt burdened by the struggle "but the river of resistance continued towards its destination." From the Women's Movement, a younger group of women took the baton and continued the journey. Among them are: Daisy Amdany, Debora Okumu, Beatrice Elachi, Wambui Kanyi, Jacinta Makokha, Kagwiria Mbogori, Shanyisa Khasiani, Abida Ali Aroni, Salome Muigai, Nancy Baraza, Atsango Chesoni, Ayoo Odicoh, Kagwiria Mbogori, Njoki Ndung'u, Deborah Okumu, Linda Musumba, Beatrice Kamau, Wanjiku Mbugua, Jackline Oduor, Jean Kamau, Jane Ogwapit, Atsang'o Chesoni, Alice Wahome, Martha Koome, Elishiba Kimani, Rosemary Okello, Jane Ogot, Maimuna Mwidau, the late Sarah Wanjohi and many others. Then there are those who organised and gave support to women in the struggle, who stood by the road and offered water, a cup of tea, a telephone call— those who have worked with women at the battle field. Among them are: Joyce Lusiji, Aileen Gathoni, Alex Karanja, Lucy Kanyinga, Joyce Kang'ethe, Sarah Otieno and Francis Kimani. But many others have continued to do so. They too are in the struggle to *water the seeds of freedom*. We acknowledge and thank them.

At another level, as Association of African Women in Research and Development (AAWORD) members, we walked together and reflected with many other women in the academic field. Among AAWORD members are: Maria Nzomo, Shanyisa Khasiani, Milcah Amolo Achola, Akinyi Nzioki, Patricia Kameri-Mbote, Mary Ngechu, Wangari Mwai, Catherine Ndungo, Jackline Oduor, Kaendi Munguti, Winnie Mittulah, Wambui Kiai, the late Mary Omosa, and the late Wilhemina Oduor.

Many others took the mantle and picked up the struggle, mobilised Women's Organisations, carried out research and shared with women at all levels. A multitude of women have been at the forefront of the struggle. We are grateful to all of them.

As you grow older, you begin to appreciate the energy of another category of a much younger group of women and the enthusiasm they bring to the Women's Movement. I acknowledge all of them here because it is not possible to mention all of these vibrant souls. Among these are: Ayoo Odicoh, Muthoni Kihara, Nkatha Kabira, Mary Njeri, Grace Maingi, Beatrice Kizi, Faith Kasiva,

Praxides Nekesa, Tabitha Njoroge, Sarah Otieno, Eileen Gathoni Musyoka, Margaret Wanjiku Ngunjiri, Alice Njau, and many more who represent the new generation of women who will have to be vigilant to ensure the gains in the new constitution become a reality for all.

Women commissioners at the Constitution of Kenya Review Commission (CKRC), namely: Nancy Baraza, Alice Yano, Abida Ali Aroni, Kavetsa Adagala, Phoebe Asiyo and Salome Muigai, have been part of this journey. They ensured that women's issues found their way into the first draft in 2002 and from there on, as rapporteurs with other women at Bomas, they ensured the gains were expanded. We acknowledge their great effort.

I acknowledge women delegates at Bomas whose names appear in the appendices of this book. They were the gallant fighters and negotiators at the National Constitutional Conference. Then there were women journalists whom we thank for keeping women's narrative alive. Among them are: Lucy Oriang, Rosemary Okello, and Njeri Rugene.

Many other women from our East African region have held our hands for many years. Among them are: Winnie Byanyima, a Ugandan freedom fighter and politician; Hope Mwesingye, Minister of State in the Ugandan government; Miria R. K. Matembe, former Minister for Ethics and Integrity in the Ugandan Government and a great fighter for the Women's Movement; Nyaradzai Gumbonzivanda, former East Africa regional director of UNIFEM; Asha Abdala, Somali Transitional Government (TFG), Laketch Dirasse, former UNIFEM regional Director; Elizabeth Lwanga of Uganda; and all others who have walked the path with Kenyan women. We thank you.

There have also been men who have encouraged and challenged women in this process and just as with women, it is not possible for me to come up with a comprehensive list of all the men that I have consulted or those who have challenged women and hence, contributed to their thinking. Among those who greatly encouraged us is the late Prof. Okoth Ogendo who remained a mentor in this process. I am very grateful to him. Ogendo was the Constitution of Kenya Review Commission (CKRC) Vice-Chair and head of the research and drafting committee of CKRC. Another one is Hon. Paul Muite, whom I regularly consulted on all matters constitutional. Others are Hon. Kiraitu Murungi for his support of the women's issues in the process; former CKRC Commissioners, Bishop Njoroge, Mr. Keriako Tobiko, Zain Abubakar who had faith in the women's capacity when donors had abandoned women as they continued to struggle to safeguard their gains; Prof. Yash Pal Ghai, former CKRC Chair; Commissioners Issack Hassan, Abdurzak Nunor, Ibrahim Lethome, and Githu Muigai (now Kenya's Attorney General), among other men, whose support one could always count on for women's agenda. I cannot forget Jeremiah Nyegenye, a young, energetic, and focused lawyer who always alerted me if an issue related to women was in danger of disappearing from the

many drafts; Hon. Raila Odinga, whom women consulted many times during the review process; Hon. Mwai Kibaki, who as Leader of the Opposition, gave women time to discuss their issues during the review process; Hon. Simeon Nyachae, who held onto the Affirmative Action for women as debate on the Kilifi draft went on; Rev. David Gitari and Archbishop Ndingi Mwana a Nzeki for all the support they gave to women during the constitution making process. As for Bishop Ndingi Mwana a Nzeki, it was not once, not twice, not even three times, we consulted him and he always gave us a listening ear.

Many thanks also go to the late Dr. Oki Ooko Ombaka, the former Chair of The People's Commission of Kenya and later the Vice Chair of CKRC. He kept his eyes on the goal during the most difficult times and always supported the women's struggle. I thank Rtd. Major General Aruasa for his encouragement as I wrote this book; my nephew Duncan Mukabi Kang'ethe who always told me I had to write; my brother Joseph Ndegwa, whose faith in me has always amazed me; and my sister Jane Wangari who has always encouraged me.

I am grateful to the Swedish International Development Agency (SIDA) for supporting the printing of this book, and to the Collaborative Centre for Gender and Development (CCGD) for their assistance. In particular, I acknowledge Mrs. Eileen Gathoni Musyoka for the initial secretarial work; Mrs. Joyce Kang'ethe who has been part of this project and the broad Women's Movement; and Ms Praxides Nekesa for helping in the coordination of some research activities related to this work.

I am indebted to Minneh Nyambura, my efficient assistant who has spent many weeks keying in the many drafts; to Doseline Kiguru, for translating some of the voices of women from Kiswahili to English; to Pauline Mahugu, my editor for the many times she had to go through the manuscript which, like the constitutional review process itself, kept mutating over a considerable period of time; Mercy Macharia of the University of Nairobi Press for the layout of the document; and J.K. Kirimania, the Managing Editor, University of Nairobi Press, for his patience.

Last but not least, I acknowledge the unrelenting support of my husband J. N. Kabira, our children Wairimu, Nkatha, Wambui, Karambu and Muturia. Without their support, understanding and appreciation, I would not have been able to tell this story of Kenya women and constitution making in Kenya.

Acronyms

3CS.....	Constituency Constitutional Committees
AA.....	Affirmative Action
AAWORD.....	Association of African Women in Research and Development
ACK	Anglican Church of Kenya
ADC	Agricultural Development Corporation
AG.....	Attorney General
AIC.....	African Inland Church
AIDS	Acquired Immune Deficiency Syndrome
AWC	African Woman and Child Feature Service
CBOs.....	Community Based Organisations
CCGD	Collaborative Centre for Gender and Development
CDF.....	Constituency Development Fund
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CIC	Committee on the Implementation of the Constitution
CID.....	Criminal Investigation Department
CJ	Chief Justice
CJPC	Catholic Justice and Peace Commission
CKRC.....	Constitution of Kenya Review Commission
CMA	Catholic Men's Association
CoE	Committee of Experts
COVAW	Coalition on Violence Against Women
CREAW	Centre for Rights Education and Awareness
CSOs	Civil Society Organisations
CWL.....	Caucus for Women Leadership
DC	District Commissioner
DCJ	Deputy Chief Justice
DO.....	District Officer
DP	Democratic Party
DPP	Director of Public Prosecution
EAC.....	East African Community
ECWD.....	Education Centre for Women in Democracy
FAWE	Forum for African Women Educationalists
FEF.....	Fredrick Ebert Foundation
FEMNET.....	African Women Communication and Development Network

FGM	Female Genital Mutilation
FIDA	Federation of Women Lawyers – Kenya
GDP	Gross Domestic Product
HIV	Human Immunodeficiency Virus
ID	Identification Card
IDRC	International Development Research Centre
IGAD	Intergovernmental Authority on Development
IIEC	Interim Independent Election Commission
ILO	International Labour Organisation
IPPG	Inter Party Parliamentary Group
KADU	Kenya Africa Democratic Union
KANU	Kenya African National Union
KBC	Kenya Broadcasting Corporation Radio
KCC	Kenya Cooperative Creameries
KCPE	Kenya Certificate of Primary Education
KEWOPA	Kenya Women Parliamentary Association
KFA	Kenya Farmers Association
KICC	Kenyatta International Conference Centre
KMC	Kenya Muslim Consultation Council
KNUT	Kenya National Union of Teachers
KPBW	Kenya Professional and Business Women
KPU	Kenya Peoples Union
KWPC	Kenya Women’s Political Caucus
LDP	Liberal Democratic Party
LKWV	League of Kenyan Women Voters
LNC	Lincoln National Corporation
MCCSN	Muslim Consultative Council Sisters Network
MMPR	Mixed Member Proportional Representation
MoU	Memorandum of Understanding
MP	Member of Parliament
MYWO	Maendeleo Ya Wanawake Organisation
NARC	National Rainbow Coalition
NCC	National Constitutional Conference
NCKK	National Council of Churches of Kenya
NCSW	National Committee on the Status of Women
NCWK	National Council of Women of Kenya
NDP	National Democratic Party
NGO	Non-Governmental Organisation
NHIF	National Health Insurance Fund
NSSF	National Social Security Fund

ODM	Orange Democratic Movement
PC.....	Provincial Commissioner
PCEA	Presbyterian Church of Eastern Africa
PCK.....	People's Commission of Kenya
PR.....	Proportional Representation
PSC	Parliamentary Select Committee
RRMOK	Redempterist Reparation Movement of Kenya
SDA.....	Seventh Day Adventist
SIDA	Swedish International Development Agency
SOREC.....	Southern Oregon Research and Extension Centre
TCI	Tomorrows Child Initiative
TFG	Transitional Federal Government
UNDP.....	United Nations Development Programme
UNESCO.....	United Nations Educational, Scientific and Cultural Organisation
USAID	United State Agency for International Development
WES	Women Empowerment Society
WILDAF	Women in Law and Development in Africa-Kenya
WOWESOK.....	Widows and Orphans Welfare Society of Kenya
WPAK.....	Women's Political Alliance Kenya
WPC	Women's Political Caucus
WRC	Women Resource Centre
WRC-DI.....	Workers Rights Consortium
YWCA	Young Women's Christian Association
YWLI	Young Women's Leadership Institute

Introduction

The Nurturers and Silent Gardeners

For many years, Kenyans were involved in the search for a new constitutional dispensation. For many of us women leaders, our focus had been ensuring that women's interests were taken on board the process and in the body and soul of the new constitution. As we used to say during the constitution making process, we breathed the constitution – the water and food had the taste of a draft constitution, and even roses smelt like the draft constitution. We were involved in negotiating the law for the review process, in collecting the views from the public, collating the views and in drafting of the new constitution. It was a long and tedious but joyful process. It was a sacred mission born out of the realisation that inequalities, political oppression, human right abuses, extra judicial killings and abuse of state power had to end. Women and men from different ethnic communities had to work towards a peaceful co-existence. We were involved in the political, legal and technical processes, in lobbying, in educating the people and in consultations with politicians and church leaders, among other activities. Women formed many teams, for example, the National Women's Negotiating Team, Affirmative Action Committees, Women's Coordinating Committees, Women's Consortium on the Constitution Technical Committees, and other teams.

After the defeat of the 2005 referendum and the botched up efforts to have a new constitution between 2006 and 2007, women seemed to have less energy to continue with the search for a new constitution but this was only temporary. Many of us, like the famous African American poet, Langston Hughes would say, had our dreams deferred, roses no longer smelt sweet, the air was oppressive, vision was blurred, and energy had completely gone—body and soul deflated. It was like walking a very long distance to fetch water, as many women of Africa do, fetch water in a big pot, walk the long journey home, and as you get into the house ready to quench the thirst of your family, you drop the pot and the water spills. It doesn't matter whether the pot dropped accidentally or you dropped it – the spilt water cannot be collected. So, you sit down to get over the shock, but you cannot sit there for long or forever; you have to gather your strength and start the water fetching journey all over again.

The constitution making process has had various miscarriages for women. Every time the issue of review was picked up, women got up again and walked the journey. We diligently continued to walk the path towards a new constitutional dispensation. Even after the 2010 referendum and adoption of the New Constitution on August 26th 2010, women did not rest. It became clear

as the implementation process got under way in 2011 that the provisions on the two third rule in representation in appointive and elective bodies was threatened. Women did not rest—they returned to the battle field to safe guard their gains in the new constitution.

At different times in our country's history, long before the clamour for a new constitutional dispensation, women organised themselves to address issues critical to them and to the nation. This history needs to be researched on and documented in order to bring women's perspectives of the Kenyan history to visibility and to influence the direction our nation takes. Hence, it has been rewarding to share my thoughts on women's journey towards a new constitutional dispensation with many women, through letters, e-mails, short messaging services (sms), phone calls, chats outside supermarkets, in homes, at meetings and in many other places.

In the course of the long journey towards a new constitutional dispensation, some moments have been shocking: resistance to proposals by women, particularly in parliament, have often come from the most unexpected quarters thereby making one wonder whether one was naïve, stupid or one had just arrived from another planet. There have also been moments of tragi-comedies. Women in this country have laughed, cried, negotiated, and strategised together, sometimes they just shared their thoughts, hopes and aspirations. There have been tense moments too; moments where one went home in pain – pain in one's chest, in the head, in the heart, on the back, everywhere. There have been moments of extreme anxiety, waiting for decisions to be made by those in power, those with authority to make those decisions. We have been in labour pains hoping for the birth of a new baby, a new constitution, only to have stillbirths or miscarriages. There have been occasional moments of relief albeit few and far apart. Nevertheless, we have appreciated these moments.

I have shared some of these experiences in this book. It has been a long journey with many twists and turns. At times, it was pleasurable to see Kenyan women speak in one voice. In the following pages, you will hear the different voices that converged in spirit and in harmony. It is also a testimony to the fact that we live in interesting times, soul-searching times, when women have reflected, prayed and even shared silence.

We do not want to forget our history and in particular, the history of women in the struggle to negotiate the double covenant—a double covenant because in this society, women want to reclaim their place as equal human beings where their experiences, knowledge and world view find their way into shaping the destiny of their nation, our nation, for the benefit of all. For women, therefore, it was negotiating a double covenant, that is, their covenant with society which has for centuries not accorded them their place as equal members but instead has placed them on the margin when it comes to power and decision making, and has treated them as children of a lesser god. A double covenant in which

they, like all Kenyans, wanted to reclaim their place in society, where corruption, ethnic tensions, political thuggery and impunity would no longer be the order of the day. Instead, the state would take its place as designated by the people to facilitate peaceful co-existence, good governance, spiritual, cultural, moral, political and economic growth of the nation and full recognition that power belongs to the people and must be exercised as the people decide. In this context, the traditional definition of “the people” was revised to ensure that the concept adopt a new meaning. The “people” are both men and women, all communities, those big and small communities, and those marginalised in any way. Never before has the concept “the people” been as elaborately reflected on as in our new constitution.

This story of women and constitution making in Kenya is not my story – it is the story of women’s struggle towards a new constitutional dispensation. It is a journey of thousands, of millions of Kenyan women. It is our collective story, the women’s story. I have merely offered myself as the storyteller. I feel as we continue the journey, that we have not reached our destination yet, we need to reflect and tell those who are new in the journey that even those who have exited from this world continue to water the seeds of freedom. As we harvest, we must also “pour some of the drink” to celebrate those who have gone before us; those who planted, cultivated and nurtured the crops and are not here to harvest. Many women have urged me on, “Tell the story; we are a people who easily forget what we did yesterday.” I agreed to tell the story in the best way I could–this book is *the* story.

As I started writing this book, I received an email from Fabu Mogaka, African American Poet Laureate of Madison, Wisconsin. This was soon after the 2005 Referendum. Part of it read:

“I was just looking at a documentary of Fannie Lou Hammer. She is one of the women I love most among those who fought hard for freedom. She was once beaten so badly that her skin turned purple. She advocated, in 1963, for Black people to be included in the democratic delegation from Mississippi. She fought hard and it didn’t happen. In fact, she died and never saw the fruits of the seeds she planted. The work you do for your country is nurturing and watering the seeds of freedom planted by others before you. The fruits will grow and it will ripen; so have the faith and see with spiritual eyes all that was promised in the draft. Know that it will come to fruition. It is a long line, my sister, of women who have fought for freedom.” *Fabu Mogaka*

I read this email during one of my darkest moments in the Constitutional Review process and I thought, “It is not fair for me to just rejoice that I have been on the line of duty, watering the seeds of freedom. We have been thousands of us, women, who have been in this struggle. I thought of women like the late Maggie Gonna, a woman who never missed a meeting called by women, the late Sarah Wanjohi from CCGD who was very passionate about

women's agenda in the constitutional review process, late Beatrice Konya, programme officer from the League of Kenya Women Voters and later the gallant warrior, the late Wanjiru Kihoro and many others who cannot tell their stories because they are no longer with us.

I thought of many with whom I have walked on this path, hundreds of them, tens of thousands of women who have watered a seed, many seeds, thousands of seeds of freedom, and I said, we need to put their story on record in case we forget, for some have already passed on the baton. Others must continue watering the seeds of freedom, for women know how to plant, nurture the tender plants, water them and care for them until the time of harvest. Watering and nurturing the seeds of freedom is what we know best.

My journey towards joining other women in the struggle for women's empowerment began in 1983, when I carried out a research with Dr. Wangui Njau, then a colleague at the University of Nairobi. This small project was on "Women's Contribution to the Economy." It was a case study of Kiambu District. It was part of the preparations for the UN Women's Conference in Nairobi in 1985. The study involved looking at women's contribution to the economy from women's own perspective. We listened to their stories, their experiences, and their view of the world, of economic development, of the government's role, of how they organise themselves, of their status in the family and in society, among other issues. It was a wonderful experience.

Since then, I have carried out other studies but I often remember this small project because it opened my eyes to the concept of women's knowledge, women's worldview, and the many invisible experiences that women have but which our nation continues to ignore. Yet, women experiences and worldview are critical for our progress as a nation.

For the next twenty-eight years, many of the researches I carried out always revealed that women's thoughts, their views, their experiences, and their knowledge remain untapped. We, as a nation, have two legs but we have chosen to hop using one leg rather than run using both. Women views on all aspects of our lives, their experience and knowledge, remain outside our public knowledge and therefore hardly influence our policies. Dale Spender (1985) referring to Ann Oakley's research "Model Knowledge Making" in *For the Record* says:

"It was men who formulated the theories about women, who made the pronouncements and proffered advice on how women should live their lives."

We seem comfortable as a nation to continue deceiving ourselves that by talking to men, we have talked to all. We have long ignored the voices of women, minority communities, the physically challenged and the poor, among other categories.

Thus, this book tells the story of constitution making in Kenya from women's perspectives. It has been a long road towards the new constitutional dispensation. Women have been at the centre of this struggle but as is often the case, their efforts are not recorded by historians and other scholars. In this particular struggle, women have walked the path steadfastly and with unparalleled commitment. Their diligence and unrelenting struggle is reflected in our new constitution.

A lot of data in this book, particularly in Part II, is based on constituency hearings where I personally took notes. For some constituencies, I was able to obtain verbatim records from the Constitution of Kenya Review Commission (CKRC) and later from the Committee of Experts (CoE). In addition, I have looked at verbatim records of Bomas Conference Committee Reports, Plenary Discussions, and the CKRC national report, among other documents. In addition, I have also perused various newspaper reports, Hansard, parliamentary reports, and reports and recommendations from women's organisations. The Kenyan Women's Movement has been the heart and soul of this struggle and I have referred to their work considerably in writing this story. The initial draft of this book was also tabled before a peer review meeting of women who have been in the struggle and I took their comments on board.

As you read this story, you will find that I have named many women who have been in the struggle. I have called them by name. In the presentation of women's voices, I have also quoted a number of women verbatim. At the end of the book, I have given names of the women I have mentioned or quoted, also those who were delegates at the Bomas National Constitutional Conference, among other women.

I own up to being influenced by the Holy Bible where we read about Abraham, Isaac and Jacob. We read about Jewish Kings, among them David, Solomon, Hezekiah, Josiah. We also read about their prophets Jeremiah, Samuel, Isaiah, Ezekiel, Hoseah, Zachariah, Haggai and many other prophets. The Holy Book also tells us about women who made a difference in the Jewish community such as Deborah and Esther, Sarah, Rachel, Miriam, and Mary the mother of Jesus, among other women. The Bible says in Genesis 25:2

“And Abraham again took a wife and her name was Keturah and she bore him Zimran, Joksham, Medan, Midian, Ishbak and Shiah and again...”

In 25:12-15:

“Now this is the genealogy of Ishmael, Abraham's son, whom Hagar, the Egyptian, Sarah's maid servant bore to Abraham. And these were the names of the sons of Ishmael, by their names according to the generations. The first born of Ishmael, Nebajoth, then Kedah, Adbeed, Midsam, Mishma, Dumah, Massa, Hadar, Tema, Jetur, Naphish and Kedemah.”

The reason for quoting the Holy Book is to emphasise the point that, the Jews knew that the people in their genealogy were important and insisted that each generation of the children of Abraham, Isaac, Jacob and other generations had to read their history and learn about their people; they had to know that they belonged to a people who mapped the path for them in this world. They have a history, a tradition, a culture, their God and their historians. Many other nations have done this. That is why we know about the Greeks, the Romans, the Egyptians, the Anglo Saxons, the Indians, the Arabs, the Quran and the history of Islam.

Similarly, many women who have been in the struggle for the creation of a new social order for us and for the future generations have names, hearts that ache, eyes that weep and feet that hurt. We must know these women by name. They have stood on the line of duty. Many of these women are named in this book so that we never forget that we stand on the shoulders of those women who walked the path to ensure a new constitutional dispensation. They have names. We shall refer to them by name as they represent millions of women who walked with them. They have names and faces and we must remember them like the Jews and many other nations remember those who have gone before them.

There have been many in the line of duty and we must keep on remembering and placing their names on the roll of honour. They handed over the baton to those whose story is told in this book. So many, many decades after Mekatilili wa Menza, Mary Nyanjiru, Prophetess Moraa, Ciokaraine, Wangũ wa Makeri, Field Marshal Mũthoni, Rahab Wabici, Grace wa Koiya, Njoki wa Hiram, Priscilla Obwonya, Sarah Wambui (my mother), Wanjiru wa Kang'ethe, and Sara Sarai, we have had the privilege of standing on their shoulders as we walk to the mountain top from which we can see the wonders of God's creation. Other women luminaries are Grace Mabu, Agnes Nderitu, Rahab Kamanda, Elizabeth Mwendu, Tabitha Ogega, and many others who have been on the line of duty just before the end of the 20th century and the beginning of the 21st century. We have been blessed to be part of the struggle that has culminated into the present *Time for Harvest* after many have cleared the field, planted, watered, nurtured, chased the predators and allowed the fruits to ripen. We are grateful to them.

Mariama Ba in *So Long a Letter* (1980:88) in her letter to her best friend Aissatou, says;

“My heart rejoices each time a woman emerges from the shadows. I know that the field of our gains is unstable, the retention of conquests difficult.”

But we, the Kenya women, shall continue to walk with a song in our hearts as we harvest and continue to water and nurture the seeds of freedom.

I own up to any mistakes that may be in this story. These are mine, but the story as I have said, is the women's story. If I have misinterpreted some situations, it was not intentional. If I have told the stories of the women who left life's journey and moved to the next life, it is because I know this story did not begin in 1992 when the clamour for a new constitution picked momentum. It was there before us and will continue long after many of us have exited this path. Many women will fill their pots to ensure that they continue to water and nurture the "Second Republic" and protect the gains that have been so vigilantly fought for by their predecessors. They will continue to nurture the new constitution for our people. That is the nature of a just struggle—it is self-propelling and self-perpetuating.

Women must realise that the fruits have ripened and it is *time for them to harvest*. That is why grandma will recite the following poem for the young ones in order for them to pass on the message to their grand-daughters and grandsons to ensure that the chain of those in the line of duty is never broken. The children will marvel at this story and grandma will tell them to tell it to their children's children who will then pass it on, just as Kizi the great daughter of Kunta Kinte, the daughter of Africa who refused to die, told her son, Chicken George, to tell his children where their people came from (Haley, A. 1976). Like many other nations, we must know our roots and our heroines and this will always help us plan our future:

Grandma Remembers

I remember hearing women say
we are tired of being left out
of being outsiders
in our own country
of being dumb founded
unable to understand what is going on.

We are tired of explaining ourselves to
a world that does not listen
a world that does not hear
a world that prefers not to know.

We are tired of being advised
advised on how to right wrongs
we purportedly committed
of being advised on what is best for us.

We are tired of knocking at doors
that remain closed or half open
we are tired of repeating the same things
to a world that looks on us in disbelief.

We are tired of discussing
negotiating and always begging
of being given 5 per cent
when we are asking for 30 per cent, of
being landless, raped, abused and beaten.

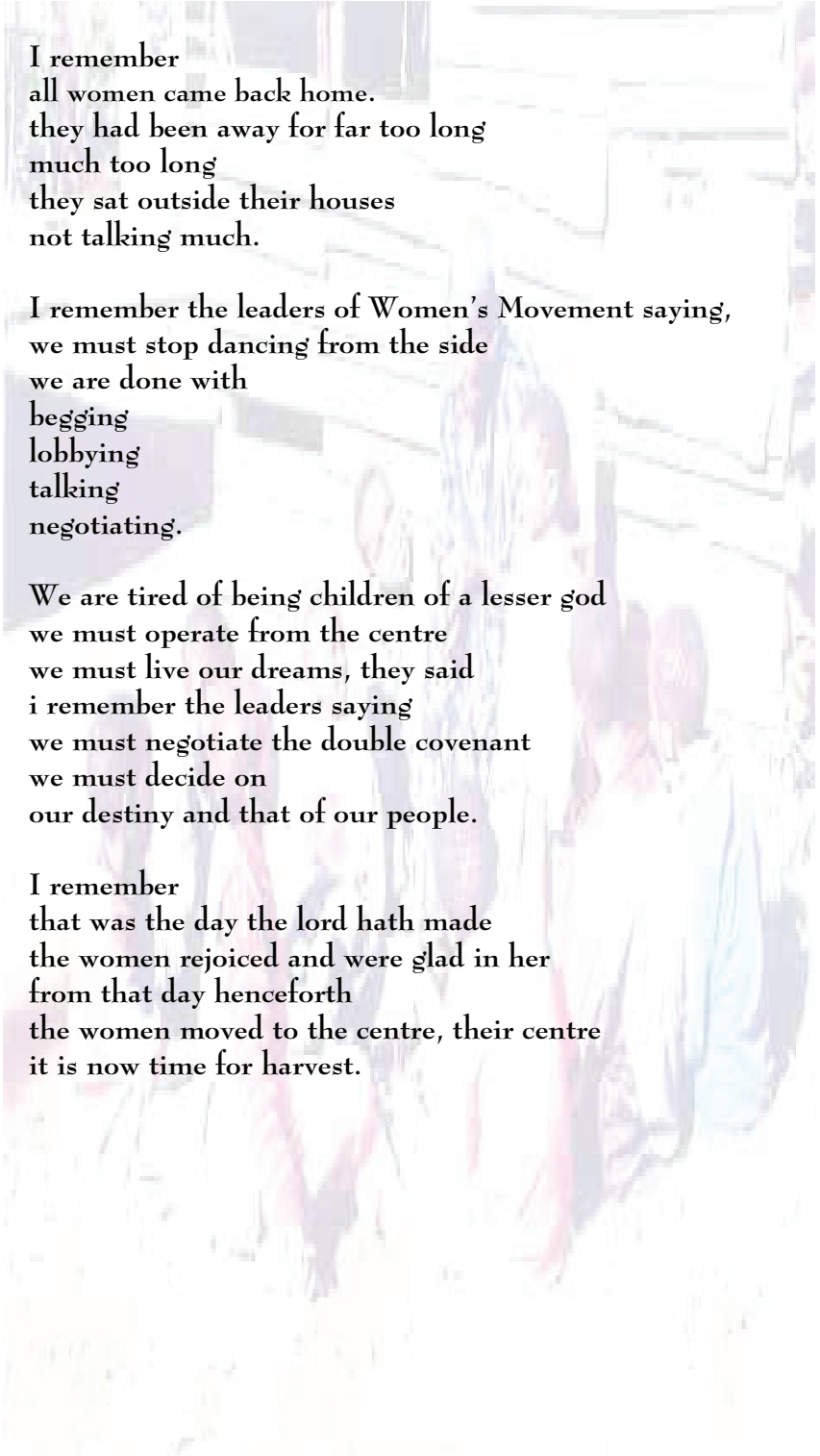
We have worked
we have talked
we have sung
we have prayed
we are sick and tired.

I remember that the domestic workers
put down the brooms, the pots and pans
women farmers put down the hoes and pangas and said,
we shall not be the silent nurturers and tillers of land.

The women teachers refused to teach
and walked out of the classrooms
and sat outside on stools and waited.

The nurses removed their white uniforms and went home
the business women, traders and hawkers came home
they stopped selling and closed shops.

The women church goers thought they had prayed enough,
those in women's guild, and catholic women's associations,
the preachers, the deacons,
the women pastors, the nuns all said
"it's time for Jesus to come back.
we have prayed, fasted and waited for his coming
for too long; far too long
Jesus should come and not send a messenger
he should come in person," they said.



I remember
all women came back home.
they had been away for far too long
much too long
they sat outside their houses
not talking much.

I remember the leaders of Women's Movement saying,
we must stop dancing from the side
we are done with
begging
lobbying
talking
negotiating.

We are tired of being children of a lesser god
we must operate from the centre
we must live our dreams, they said
i remember the leaders saying
we must negotiate the double covenant
we must decide on
our destiny and that of our people.

I remember
that was the day the lord hath made
the women rejoiced and were glad in her
from that day henceforth
the women moved to the centre, their centre
it is now time for harvest.



Clearing the Fields: Background and Context of Women's Struggle

Kenya Women's Movement: a brief background

The Women's Movement in Kenya has its roots in these self-help groups which existed even in pre-colonial societies. In postcolonial era, these self-help groups evolved into one of the most vibrant movements in the country—the Women's Movement. While trade unions and cooperative societies remained male dominated, women's self-help groups became women's way of expressing their desires, their needs and concerns. Women developed their structures, values and a form of resistant ideology through them. The traditional type of women's group formation stemmed from the realisation that women share certain problems which could be effectively tackled only through collective effort. At the early phase of Women's Movement in Kenya, one observes demonstrated awareness among women that they had common problems which were not experienced by men—at least not to the same degree. For instance, in traditional societies, women within neighbourhoods would organise to help one of their own who had given birth. They would cultivate her piece of land, fetch water, collect firewood and look after her and her children.

During the State of Emergency in Kenya and soon after independence, women's groups as we know them today were born. These women groups borrowed largely from the traditional women groups in one sense because of their focus on social welfare.

However, these groups have gone further than social welfare to building houses for each other as members, buying property and owning titles of land either as groups or as individuals. This has brought radical changes even at the family level. When a woman has a piece of property in her name, it means that she cannot be threatened with being sent away from her matrimonial home. Rahab Wabici captures this mood very well in *Our Mother's Footsteps*, (CCGD, 1997) when she says,

If I have land,
I can work on it,
sleep on the grass,
sell it or just admire it.
I can do whatever I want.

The women's groups reflect the Harambee spirit of Self-help Groups spearheaded by grassroots women leaders; for example, Nyakinyua Women's Groups in Central Province. They recognise that together, they are strong. They have promoted the spirit of togetherness, of self-reliance, of commitment and determination. Women groups have questioned through their actions and structures, the current economic and institutional structures and development policies. They have watered and nurtured seeds of freedom.

Maria Angelique Savanna (1982:40) says:-

“Although oppression of women is universal in nature, it expresses itself in different forms, in different Nations. It is this which justifies the National character of women's struggles and choice of methods in the struggle,” as quoted in (Akinyi, Kabira, 1994).

The Women's Movement demonstrates collective action in women's struggle against all forms of oppression and in particular, economic oppression. Maendeleo Ya Wanawake Organisation (MYWO), formed in 1952, has survived for all these years. Although its initial orientation during the colonial period was welfare, it later became a political force. Even strong political parties like Kenya African National Union (KANU) found it necessary to append the organisation to itself in order to use its power to mobilise women. In Central Province, for example, women organised against colonial forced labour system, land use and commodity pricing (Kanago, et al., 1987). Other writers have also documented women's political resistance and struggle against colonial rule in Kenya; a notable example being the 1920 Harry Thuku uprising where women, led by Mary Nyanjiru, directly confronted the colonial government in demanding the release of Harry Thuku (Kabira and Akinyi, 1994). In all our communities there are examples of women organising to deal with their social-historic and economic situations. A lot of this information, however, remains invisible to our policy makers and also remains outside our public knowledge and definitely, outside the debates in our academic institutions.

The 1975 United Women Declaration in Mexico required governments to strengthen existing women's organisation and create national machineries for women where they did not exist. The Kenya government's response to this international requirement was to strengthen and revitalise MYWO and to create government national machinery for women, namely, the Women's Bureau whose mandate was to register and coordinate the activities of all women's groups in the country—groups that women had themselves created out of their

own initiative. MYWO, on the other hand, increased its membership and linkage at the grass roots level. Mrs. Jane Kiano and other leaders are credited with the expansive movement of the organisation.

While the Women's Bureau, a government department located in the Ministry of Culture and Social Affairs, was busy registering women's groups, MYWO was busy doing the mobilisation. Thus, by 1985, MYWO had become the leading NGO for mobilizing women, especially in the rural areas, with a membership of 300,000 belonging to 8,000 groups.

As MYWO was closely working with the government, the National Council of Women of Kenya (NCWK), at least during Wangari Maathai's tenure as chairperson, spearheaded the Women's Movement by taking a position on national issues and by making demands for legislative changes on issues where women's rights were adversely affected (Nzomo, 1991). Later, the Green Belt Movement under the leadership of Wangari Maathai served as an effective platform from which to challenge state decisions on matters of the environment and human rights. Wangari's battle trying to stop Moi's government from erecting a skyscraper in the middle of Nairobi's Uhuru Park is remembered very well. Wangari faced the government with unparalleled courage and determination. I remember meeting Wangari Maathai in her wooden office at the National Council offices on University Way. In her usual friendly look and hearty laugh, she said to me, "*Wanjiku, I feel really good when I am fighting for our people, am not scared. I feel very happy.*"

For Wangari Maathai, she who fought many battles, it was a joy to fight for her people. We have a lot to learn from Wangari who was a wonderful Kenyan woman.² The Nobel Laureate, the pride of Africa, continued being in the line of battle, watering the seeds of freedom. We celebrate this daughter of Africa.

United Nations Women's Decade and the Kenya Women's Movement

The 1985 Conference held in Nairobi came at a time when discrimination against women was still embedded in the legal and institutional frameworks. For example, the 1969 repeal of the Affiliation Act remained in place. In addition, the law of Marriage and Divorce Bill had already twice come up for debate in parliament and had been defeated by the male dominated parliament. Further, the defeat of the 1987 Wambui Otieno's protracted legal battle was a clear indication that Kenyan women had a long way to go (*Daily Nation*, May 1987; Nzomo, 1987; Ojwang & Mugambi, 1989).

² One day, my uncle Njoroge wa Mahinda, was very happy when I went to see him in Lari during a cold season. I had carried two blankets to keep him warm. When he saw me, he said, "*Wanjiku, my mother, why did you not come with Wangari Maathai. She is our son. She needs to come; this forest next to us is finished. She should come and stop these thieves.*" (Wangari Maathai died on September 25th 2011.)

The 1985 United Nations Conference gave Kenyan Women's Movement an opportunity to reflect on their directions and their priorities. This was more so because Kenya had the privilege of hosting the United Nations Conference and Dr. Eddah Gachukia the great educationist chaired the NGOs Forum. Women reflected on their legal, economic and social rights. Many individual Kenyan women in the professions such as law, the media and academia, organised workshops, seminars, educational tours and public campaigns to educate women on their rights. Federation of Women Lawyers (FIDA), women in the media, Association of African Women Research and Development (AAWORD), many women's organisations, among others, have been at the forefront in ensuring that women's interests are raised at the highest levels of leadership. Women in Kenya have taken great advantage of any existing opportunities to fight for their rights especially on property rights, political and other leadership representations, domestic violence and land.

From the repeal of Section 2A of the Kenyan Constitution in December 1991, women's voices from within and outside Women's Movement have been strong and consistent. Kenyan women have clearly moved forward to create a Movement that has acted as a pressure group or a lobbying forum for influencing change in the policies and structures that affect them. Sometimes, the movement has been very vocal and unstoppable; other times, like Margaret Ogola says, the movement, just like a river meanders, goes underground and then comes back to the surface and continues to flow. Women have fought to fully participate in all decision making positions and processes and have insisted on their issues being mainstreamed in the new democratic process. The gains reflected in the Constitution of Kenya Review Commission (CKRC) Draft (2002), Bomas Draft (2004), Wako Draft (2005), the Harmonised Draft (2009), and finally, in the New Constitution 2010, among other gains, are a clear indication of the women's cohesive struggle.

Women's focus since 1992

The objective of Women's Movement from 1992 has been to increase women's power and influence by working towards ensuring a critical mass of at least 33 per cent women's representation in parliament and other political and public decision-making bodies. Many women's organisations have been established since 1992. They include the League of Kenya Women Voters, Coalition on Violence against Women (COVAW) and AAWORD.

Many of these women's organisations set up programmes and activities for implementing women's agenda identified and agreed upon at the Women's Convention which was organised by the National Council of Women of Kenya (NCWK) in collaboration with African Women Communication and Development Network (FEMNET), on February 22nd, 1992. This was the first women meeting of its kind in independent Kenya. It brought together Kenyan

women – those at the grassroots level and those at the national level to dialogue with each other on the women's agenda in the democratisation process. This convention once again demonstrated women's mobilizing capacities and the ease with which they can overcome their social economic barriers in order to address their common problems.

That the convention was held with government consent was an indication that women's voices were being heard. It is also significant that a controversial wall around Uhuru Park which had been erected when the government was planning to build the controversial skyscraper was brought down on the same day the women held the convention. The now famous *Freedom Corner* was baptised that day by the convention participants led by Prof. Wangari Maathai, later a Nobel Laureate. Women had started on a journey and have since not looked back. They have continued to nurture and strengthen their efforts. Many women's organisations clearly focusing on women and political power were born later. These include Women's Political Alliance of Kenya (WPAK), Women's Political Caucus (WPC) (now Caucus for Women's Leadership), Education Centre for Women and Democracy (ECWD), Muslim Sisters Network, and Kenya League of Women Voters. Other organisations focusing on gender-based violence such as Coalition on Violence Against Women (COVAW) were also born.

Why 1992 is significant

The year 1992 is significant because crucial events for women took place. This was the year that Section 2A of our constitution was amended to return the country to multiparty politics. For women, one event towards the end of 1991 which helped shape the women's direction was the presentation of a paper by Maria Nzomo on women's participation in politics. The paper was part of a series by AAWORD, an organisation led by a group of academics at the time. The chair of AAWORD then was Prof. Shanyisa Khasiani and I was the co-chair. Other members of the committee included Prof. Maria Nzomo, Dr. Wanjiku Mwotia, Ms. Mary Ngechu, Prof. Jackline Oduor, and Prof. Milcah Amolo Achola, all of the University of Nairobi, and Dr. Akinyi Nzioki a gender consultant.

The team was committed to defining the direction for Women's Movement in Kenya under very difficult circumstances. AAWORD was then housed by the Young Women Christian Association (YWCA) under the able leadership of Mrs. Louisa Awiti. In their effort to define the direction of the Women's Movement, the committee put pen to paper and came out with two books: *Women's Movement in Kenya* and *Gender and Democratic Governance* were published by AAWORD.

The publication of Prof. Maria Nzomo's paper by AAWORD on "Women in Politics" was significant. In this paper, Nzomo discussed the global problem of absence of women in leadership positions. She argued that even those women who had taken key political leadership positions like Mrs. Eva Peron of Argentina, Mrs. Sirimavo Bandaranaike of Sri Lanka, Mrs. Indira Gandhi of India, Mrs. Corazon Aquino of Philippines and Mrs Benazir Bhutto of Pakistan, among other women leaders, initially derived part of their political legitimacy from association with prominent male politicians.

Nzomo then looked at the barriers towards women's participation in politics in Kenya, among them the attitude arising from socio-economic cultural engineering, lack of access to formal education, access to resources of production and income as well as male dominated political parties. She traced women's struggle to participate in political leadership positions and the struggle of women's organisations to deal with state manipulation. Particular reference was given to MYWO in particular. Nzomo also noted Prof. Maathai's decision to confront the government over its decision to build a skyscraper in Uhuru Park. When Prof. Wangari Maathai decided to seek a high court injunction to restrain the government from implementing its decision, the entire membership of parliament descended upon her, attacking her personally as a sentimental frustrated divorcee who had no credentials or mandate to challenge state decisions. What was a national issue was reduced to a personal gender issue between Wangari Maathai and male members of the political systems (Maria Nzomo, 1991:22).

Maria also referred to examples where it was clear that women in Kenya had failed to make an impact. Examples included abolition in 1969 of the Affiliation Act that required fathers of children outside marriage to provide some financial support (*East African Standard June 17th 1969*); and the law of Marriage and Divorce Bill which was defeated. The defeat of this law denied house allowance to married women in the public service. Maria also quoted lack of provision for paid maternity leave (Maria Nzomo, 1991).

The response from the state machinery was immediate. "Those women are from the opposition," they argued. It took the intervention of Hon. Julia Ojiambo, the then woman coordinator for Kenya African National Union (KANU) women and youth, at the time to stop the Criminal Investigation Department (CID) from placing AAWORD leadership under surveillance.

I have discussed Nzomo's paper at length because it raises critical issues that brought to the fore the debate on women in politics and decision-making.

The National Women's Convention, 1992

Another reason for the significant choice of 1992 is that, the National Council of Women of Kenya under the leadership of Ms Lillian Mwaura, assisted by FEMNET Chairperson Ms Njoki Wainaina, organised a National Women's Convention at the Kenyatta International Conference Centre (KICC). Over 2000 women participated in this convention. The main debate was on women and political power. Women declared the parties of their choice; they said time had come for women to be involved in politics. Prof. Maria Nzomo presented the key address based on her paper, *Women in Politics* discussed earlier. Among other speakers were Prof. Wangari Maathai, Hon. Martha Karua, and Hon. Julia Ojiambo. AAWORD was conducting a survey of how political parties were doing in terms of women who had declared their support and whether when women leaders spoke, they affected the choices women made in choosing parties. Prof. Khasiani and myself coordinated this exercise. It was a powerful meeting, a big show of solidarity among women. Before the day was over, political elite had already begun to feel the threat of women power. Word went round that this was an opposition meeting, a Central Kenya women meeting (read the Gĩkũyũ women). In the evening, Western Kenya women formed their own Western Caucus. But "the divide and rule" tactic from the KANU government effort did not go far.

Since the 1992 Women's National Convention, women have never gone back. The next eighteen years would see a focused Women's Movement mobilise around key issues and become a force to reckon with. The next period saw women retain the spirit of the 1992 National Convention in many ways. These include a struggle for institutional framework for gender mainstreaming which resulted in the establishment of a gender commission, a ministry in charge of women affairs, children and social services, a presidential directive for 30 per cent representation in public service and publication of the sexual offences bill.

Nothing, however, has taken so much energy from women than the efforts towards increasing women's representation in political bodies. For examples, in 1997, the government was under pressure to review the constitution of Kenya. Therefore, the Inter Party Parliamentary Group (IPPG) was formed to look at minimum reforms. At this time, women's organisations and individual women leaders had begun to participate in the struggle for the review of the Constitution. Among those who were at the forefront included Martha Karua, Maria Nzomo, Rose Waruhiu, Phoebe Asiyo, and Wangari Maathai. I remember Atsango Chesoni working with Phoebe Asiyo to bring in women's agenda into IPPG. Some of the lobby documents were prepared by the Collaborative Centre for Gender and Development (CCGD), where I was the Director. Martha Karua was at the Centre of the IPPG debate. We owe it to her and others who ensured that at least 50 per cent of the nominations would go to women. Although there were loopholes in the agreement, for women, it was an

important achievement and remains so today. We credit the higher number of nominated women MPs in parliament to this process.

In 1997, we had five women members out of the 12 nominated MPs. In 2003, eight out of 12 members nominated were women. In 2007, we had 6 nominated women MPs. Nominations of female MPs have often brought to parliament very dynamic women; for example, Hon. Njoki Ndungu, Hon. Julia Ojiambo, Hon. Amina Abdala, Hon. Cecily Mbarire, Hon. Adelina Mwau, Hon. Ruth Oniang'o (in the 9th parliament) and Hon. Rachel Shebesh, Hon. Millie Odhiambo (in the 10th parliament).

This amendment to the Constitution to include women has shown that through Affirmative Action, social engineering can occur. It has enriched parliament by bringing women who have come to the August house with a clear agenda of bringing in women-friendly laws. The Sexual Offences Act is a very good example.

Hon. Phoebe Asiyi motion, 1997

In 1997, Hon. Phoebe Asiyi tabled the first motion on Affirmative Action. Her motion called for parliament to increase the number of women parliamentarians by 18 (eighteen), at least two from each province, and an extra two from the Rift Valley. This move by Asiyi brought women together. I remember walking with Asiyi to various ministers to solicit for their support. Hon. Kiraitu Murungi seconded the motion.

In proposing the motion, Asiyi noted that she wanted the government to:

- a) Introduce a legislation to require all registered political parties to nominate at least one third women candidates to participate in National and Local Authorities elections;
- b) Introduce an amendment to the Constitution of Kenya to provide for two parliamentary Constituencies exclusively for women candidates in each administrative province of the Republic and;
- c) Introduce appropriate legislation to provide funding for all registered political parties and wherever public funding is possible, the amount of funding be linked to the percentage of women candidates fronted by each party.

The Political Parties Bill was signed into law in 2008. In 1997, Asiyi had tabled the bill to fund the political parties and to take on board Affirmative Action for women's representation in parliament. Often, women's contribution to political issues is rarely recognised. For example, nobody referred to Asiyi's original proposal as the Bill was being debated in parliament in 2007, hence, the sentiment that women's work and contribution remain invisible.

Asiyo had explained the rationale behind the motion including how the two women from each province could be elected. She gave examples of how it was done in Uganda and Tanzania and allayed fears that such a process would interfere with constituency boundaries. She noted that the Government had signed several international obligations and had committed itself then without any reservations. She referred to the Beijing Platform for Action signed by the Kenya Government to the fact that Kenya had adopted Affirmative Action in Education as a result of which we had more girls going to secondary schools. She explained:

“Representation of women in political parties, parliament and local authorities will bring a different perspective in politics and our national lives.... It will bring a new vision and new politics to our nation. It will improve our politics and policies.... There will be higher priority placed on food security, agriculture, education, health, national security, focus on street children, etc.” (*Parliamentary Hansard, April 23rd 1997:334*).

Thus, Hon. Phoebe Asiyo eloquently and with great passion presented the case for Affirmative Action for women’s representation in parliament and civic authorities.

In seconding the motion, Hon. Kiraitu Murungi asked the Government to do what it had been telling the International Community it was committed to. He also noted that the motion sought:

“Introduction of a quota system to be established at political party level so that one third of all the candidates for civic and parliamentary elections put forward by political parties were women. He went further to explain about the two seats for women in each province and funding for political parties. He argued that he supported the motion within the framework of Constitutional and administrative reforms that were seeking for better governance in this country” (*Parliamentary Hansard, April 23rd 1997:342*).

Kiraitu emphasised:

“Kenya is one of the most backward countries in Africa on these issues. Only 3 per cent of members of parliament are women while South Africa has 25 per cent, Uganda 18 per cent, Tanzania 15 per cent, and Eritrea 20 per cent.... We should be ashamed of ourselves that out of 200 members, only 6 are women.”

In opposing the motion, Assistant Minister in the office of the president Hon. Julius Sunkuli, argued that no one ever uses Affirmative Action to help the majority. His argument was that the Government believed in Affirmative Action; that it was a lopsided motion requiring that they assist the majority, something that was never done anywhere else; that the Kenyan constitution was based on the equality of human beings and the principle of one man, one vote; that every woman and every man had one vote; and that what the Government and NGOs needed was to provide civic education.

He added:

“There are so many women in this country; not all of them wearing high heeled shoes. But those who are not wearing high heeled shoes happen to be the majority and they cannot entrust their lives to people just because they are women. The Maasai word for “Woman” means “the great one” and the Maasai community really exalt their women. They are the ones who own the houses, cattle; infact the man has no authority going into the cattle Boma to sell a cow that belongs to his wife.” (*Parliamentary Hansard, April 23rd 1997: 345*)

He argued further that the motion did not take into consideration our culture or international principles of equality between men and women and, therefore, it ought to be rejected.

The views expressed by Hon. Julius Sunkuli were not unique to him. The concept of democracy on one man, one vote has been a comfortable definition for many politicians. It throws the blame to women, arguing that they have the numbers. It ignores all other issues of the level playing field such as economic power, culture and traditions, myths and stereotypes, among others.

Hon. John Michuki supported the motion giving in detail instances where Kenya had used the principle of Affirmative Action even where it involved the majority, for example, on issues of Africanisation of business.

On his part, Hon. Mukhisa Kituyi noted that legislative action and constitutional reform action meant to strengthen participation of women in the leadership process was good for the nation, for women and for men; that National Assembly has the responsibility of removing the attitudinal hurdles from women to free their immense energy. Kituyi stated that contrary to Sunkuli’s assertion, Maasai women do not own property; they have user rights in their animals. “Having a right to milk a cow is not the same as having a right to sell that cow,” he said and continued to say that if there were more women in parliament, society would pay more attention to street children, and domestic violence among other issues. (*Parliamentary Hansard, April 23rd 1997:348*).

Through many interruptions, Kituyi ably and intellectually defended the motion. Kituyi clearly recognised the importance of social engineering. He also ably demonstrated how bringing women to parliament would bring in a new perspective in the legislative agenda, a position also articulated by Hon. Oki Ombaka.

His support was followed by that of Hon. James Orengo who also drew members’ attention to the fact that implementation of Affirmative Action was already in place, as reflected in constitutions such as that of South Africa. He added that the House was dealing with a major problem of sexism; that Kenya was like Nigeria and Zaire in terms of low level women’s representation; that

women's representation was lowest where dictatorship reigned; and that women's rights were part of the fundamental rights that should be part of our legislation.

The arguments for Affirmative Action could not have been articulated better. Clearly, Hons. Orengo, Michuki and Kituyi had fully understood the reasoning behind Affirmative Action.

Hon. Catherine Nyamato argued that women had worked with men; that they did not intend to displace them, that women could make very good managers and that they were/are the backbone of the nation. It was, therefore, reasonable to support the motion.

The Government position through Hon. Koech, the Minister of State, Office of the President, was that there was no need for this motion because male MPs represented women and girls and that girls were already doing very well in schools; that there was already a woman minister for culture and social services. He also told the house that there were women in the public service and, therefore, what the government needed to do was encourage more education opportunities and promote civic education. It was his considered opinion that women were doing a wonderful job bringing up children which was a very important role and, therefore, those who had time and energy to struggle could do so like those already in parliament; and that the constitution did not prevent women from coming to parliament. That as a country, we had to move slowly and allow some changes to come naturally; to leave some of these things to nature; leave the natural force of political evolution to come slowly; and that because of our cultural setups, time was not ripe for Affirmative Action.

Again, these MPs' views were not new. Women had heard them over and over again. The paternalistic message, the view that women's rights are for the government to give or not to give has been articulated in Kenya parliament very many times.

In response, Hon. Oki Ombaka gave his support to the motion saying that when 52 per cent of the population only have 3 per cent representation in the August house, it was just common sense to know that something was seriously wrong with Kenyan society.

He continued to state that if Government had to offer leadership, Kenya Government could not abscond from its responsibility by saying that society would somehow take care of itself (*Parliamentary Hansard, April 23rd 1997:356*).

Hon. Karua, in her contribution had this to say:

“I must, like my colleague who has just sat down, express dismay at the stand taken by the Government with regard to this motion. In the last

Session, the Government told this House that it was committed to implementing the Beijing Platform for Action. One of the areas of critical concern is increasing women's participation in decision-making. Today's response by the Government seems to suggest that it does not exactly know its stand on women's issues. It seems to suggest that there is a serious contradiction within the Government as to how it should tackle issues of women's empowerment. It does appear that the Government is busy giving mere lip service to women's issues and making statements that are suitable in international fora to gain respectability, whereas back at home, it is doing exactly the opposite. Kenya is among the most backward nations when it comes to the question of women's political empowerment. What this motion is calling for is political good will and leadership from the Government; it is difficult to hope that society will evolve differently.

The official attitude of the government and its institutions is that women should play a secondary role. We have been told by the Minister in his response that women are doing very well in other areas, which I understood to mean in the kitchen and child rearing. I want to respond to that by saying that by nature, a woman is capable of taking dual or multiple responsibilities quite effectively. We should, therefore, not be told about our maternal duties when we ask for participation in leadership. A woman is endowed by nature to take many responsibilities in different areas. With those few words, I beg to support the Motion" (*Parliamentary Hansard, April 23rd 1997:357*).

I have referred extensively to the Parliamentary Hansard in order to demonstrate the struggle that Kenyan women have gone through. I have also shown how long women like Hon. Phoebe Asiyo and Hon. Martha Karua, among others, have walked the path of the women's struggle. Let it not be said that women have not been walking this path. The government's stand on the motion was clear. It was not going to take the lead in terms of women's representation in leadership. The message was that the signing of the commitment to international obligations to women was just mere lip service.

Hon. Martha Karua and other speakers were asking the Government and parliament to take leadership. Men like the late Oki Ombaka, Mukhisa Kituyi, Orengo, Kiraitu and Michuki rose to the occasion and defended what they believed in and knew to be right. They used logical arguments and stood by the motion.

Others who argued against this motion wanted to perpetuate the fallacy that women in their culture are happy the way they are. That mothering, nurturing and playing supportive roles is enough of women. Myth and myth-making process is a daily pre-occupation for those who want to control their wives and women in general. Kenyan and African tradition is full of poems/stories/songs/proverbs that create myths that justify oppression for women. We must demystify these myths and expose them for what they are—myths, for it is a well-known fact that those in power never give up power willingly and if

they do, they do it only in order to be able to plot and scheme again and regain it. However, the patriarchal system is gradually caving in to pressure for change and that is why the arguments of leaders like the late Hon. Oki Ombaka are very appropriate.

The beginning of a national women's political movement

The debate on the Affirmative Action motion was revealing in many ways. It demonstrated the hurdles that women in Kenya had to go through but also brought to the fore great leadership qualities from some members of parliament.

The motion was defeated but seeds of Women's Liberation were watered once again and clearing of the fields had begun in earnest. I say "watered again" because we do not want to forget the struggles of women's groups movements that I talked about before, nor forget leaders like Eddah Gachukia, Ruth Habwe, Jael Mbogo, Agnes Ndeti, Zipporah Kittony, Jane Kiano and the building of Maendeleo House, National Council leadership, and others. The Affirmative Action motion, however, was a landmark in the struggle for women's representation.

When the Asiyo motion was defeated, women members of parliament, women's organisations and individual women leaders met around parliament and decided to wage an organised battle. At this meeting, inside parliament grounds, women were addressed by Hon. Phoebe Asiyo and Hon. Agnes Ndeti, who rushed from the airport to come and support the motion. Also by Hon. Zipporah Kittony, who had defied President Moi and had voted for the motion, when KANU had been mobilised to come and defeat the motion—which they did. Women spoke with one voice; they decided to continue walking on the path towards their dream. They formed the Women's Political Caucus which led the efforts in *clearing the fields*.

Though the defeat of the Asiyo motion was traumatic for women, it was a wake up call that gave women energy and unprecedented collective determination to walk together to ensure that their issues were moved to the centre—hence, their immediate formation of Women's Political Caucus outside the chambers. They decided that they no longer needed the label of non-political/non partisan women's organisations. They were a political body. Hon. Asiyo was asked to chair the caucus while I was requested to be the convenor.

This decision – that women were a political body – marked the beginning of a powerful Women's Movement that was to mobilise the women as individuals and organisations in the struggle for a new constitutional dispensation. Thus, the formation of the Women's Political Caucus was a turning point in women's struggle. Women stopped apologizing, as groups, as organisations and as

individuals for working towards appropriating power. They came together and decided to consolidate; not only to educate themselves, but also to negotiate for institutional, constitutional and policy change in order to reclaim their space in political institutions such as parliament, local authorities and political parties. Both women in government and in the opposition declared that this was the path they would walk, clear the path and together move to the centre and stop dancing from the side. They decided that Affirmative Action was a right, not a favour. The Women's Political Caucus, as we shall see later, became a formidable force. Many women's organisations and individual women politicians joined it. Its steering committee was composed of the following members :

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|-----------------------------|---|
| Hon. Phoebe Asiyo | – Former Chairlady of MYWO and former Member of Parliament and later Commissioner, CKRC. |
| Hon. Martha Karua | – Lawyer and later Minister for Justice and Constitutional Affairs. |
| Hon. Martha Koome | – Lawyer, later Judge of the High Court. |
| Mrs. Abida Ali Aroni | – Lawyer and later Chair, Constitution of Kenya Review Commission, later Judge of the High Court. |
| Prof. Jackline Oduor | – Professor of English, USIU, later Secretary for Children's department in the Ministry of Gender, Children and Social Affairs. |
| Prof. Wanjiku Mukabi Kabira | – Professor of Literature, University of Nairobi, later Vice Chair, Constitution of Kenya Review Commission. |
| Mrs. Jane Ogot | – Coordinator of the Women's Political Caucus. |

With the defeat of the Affirmative Action, women seemed to have walked into a cul-de-sac. But through the Women's Political Caucus (WPC), they decided that they would move to the centre and operate from there. They would no longer struggle from the periphery. As Jane Kiano put it, "Women rejected the role of merely saying prayers, making tea and dancing for politicians during meetings." They wanted to sit at the table and negotiate. Women were making headlines in the mainstream media too.

Formation of the Affirmative Action Steering Committee

Having committed themselves to a political battle and with the clamour for new constitutional dispensation, women leaders and women's organisations next formed the Affirmative Action committee, consulted widely, worked with rural women and mobilised at all levels. Most of the women involved in the process including Hon. Phoebe Asiyo, Hon. Martha Karua, Hon. Catherine Nyamato, Hon. Adelina Mwau, Hon. Charity Ngilu, Hon. Julia Ojiambo and

Hon. Zipporah Kittony. These formed the political wing of the Affirmative Action Committee.

Research was carried out, lobbying was done, consultations held. We even invited women from the East African region to help out. They included Hon. Winnie Byanyima from Uganda and Hon. Hope Mwesigye, later minister, office of the President in President Museveni's government.

Women planned to have the Affirmative Action Bill tabled again in parliament. They decided that after the defeat of the Asiyo Motion, they were not going to relent. So, a technical team composed of researchers among them, Wambui Kanyi, Ayoo Odico and drafters: Kagwiria Mbogori, Njoki Ndung'u, and Shanyisa Khasiani, gathered all the necessary information for the bill.

At a workshop organised by the CCGD in 2000 before the tabling of the bill by Hon. Beth Mugo, which was attended by many women leaders and representatives of women's organisations and Community Based Organisations (CBOs), women seriously studied various electoral systems that would facilitate increased participation of women in the leadership positions and acknowledged the need to deal with the choices of an electoral system that was appropriate. They compared notes on how countries in the region were handling women's representation in parliament and noted that Kenya was at the bottom of the rank. They hailed President Julius Nyerere and Yoweri Museveni for implementing Affirmative Action in our neighbouring countries. They identified various methods of implementing Affirmative Action and were ready to present their case to parliament. They noted that the choice of any electoral system was important in determining how women could enter into the political context, and that, proportional representation systems have recorded the highest number of women in political leadership worldwide.

Women recognised that although in Kenya there was no statutory clause that bars women from participating in politics, the political climate, retrogressive cultural attitudes, high poverty levels, illiteracy levels impacted negatively on women's participation in the electoral process and that this had to change.

Women recognised that a constitutional amendment would require two thirds support of all members of parliament; hence, they had to lobby widely and use appropriate strategy. They needed others to walk with them. They, therefore, expanded the Affirmative Action Committee to incorporate minority communities, persons who were physically challenged parastatals and the youth, among other socially excluded groups. By expanding the constituency to include other marginalised groups, women had come to a realisation that there was need for building a powerful network with others in order to break through the patriarchal power structures. They reached out to other categories

and fought for seats for special groups, e.g. persons with disability, minority communities, and other similar groups.

Women set the pace. In terms of choice for the implementation strategy, they agreed to go the Ugandan route where the “District concept” as a strategy for implementing Affirmative Action for increased women’s participation in parliament and local government would be proposed. They argued that the concept would be easy to sell, and it was non-threatening.

On modalities, women proposed that elections could be held through colleges at the local council levels or through nominations by political parties and then women and men would vote during an election where only women candidates would be contesting. They, however, noted that women nominated by political parties would represent party interests only and not women’s interests or the electorate; and that this could promote sycophancy. Thus, had extensive discussions on the implementation strategy and having recognised that it would be very difficult to mobilise a male dominated parliament on Affirmative Action, they looked for modalities that would generate less resistance. They studied the various existing quota systems, political parties’ interests, parties and ethnicity, nepotism and sycophancy and agreed that mechanisms existed for the implementation of the one-third women’s representation. They agreed that the system could be used as a short-term gain for Affirmative Action.

Women agreed that they needed to mobilise their fellow women countrywide to push for the Affirmative Action Bill through parliament. CCGD had consulted with women from 80 constituencies. So, mobilizing them to support the Affirmative Action Bill would not be difficult. The CCGD was supported in this endeavour by the United State Agency for International Development (USAID) and the Norwegian Embassy. Many women’s organisations, including Women’s Political Caucus, League of Kenya Women Voters, International Federation of Women Lawyers, Widows and Orphans Welfare Society of Kenya (WOWESOK), Federation of Women Groups, Maendeleo ya Wanawake and the National Council of Women of Kenya, among others, were the force behind the support for this Bill.

Introducing Affirmative Action Bill 2000

On April 12th 2000, Hon. Beth Mugo, in collaboration with women’s organisations and the support of Affirmative Action Committee, tabled the Affirmative Action Bill. Women’s organisations had mobilised strong grass roots support. Hon. Beth Mugo sought leave to:

“Introduce a Bill entitled “Affirmative Action” in order to improve and increase representation for marginalised groups, particularly women, in policy making institutions.” (*Parliamentary Hansard*, April 12th 2000)

In moving the motion, Hon. Beth Mugo appreciated the move by parliament to allow for equality bill and another one to establish a commission for women, as well as the implementation of Beijing Platform of Action, Dakar Platform of Action, and the Abuja Declaration. She reminded parliament that the Bill was a test on parliamentarian's sincerity for their commitment to women's participation in leadership. She said that she was seeking Affirmative Action for women's representation in parliament and local authorities, a strategy used in many countries including those in our region. Kenya, she noted, stood out as a sore thumb for refusing to accept Affirmative Action in the region. She referred to those countries that had implemented this, especially in Africa, which included Uganda, Tanzania, Seychelles, Mozambique, Djibouti, Eritrea, and South Africa. She reminded members of parliament that Kenya had committed itself to implementing Affirmative Action which was part of Beijing Platform of Action; and then talked about the strategy for implementation of the Affirmative Action she referred to the District Strategy in Uganda and said MPs would hold wide consultations.

Mugo spoke passionately about the bill. She had worked closely with the technical committee on Affirmative Action who provided all the technical information required. Women's organisations had mobilised women who filled the speaker's gallery to capacity and the public gallery too. They waited in anticipation.

In supporting the motion, Hon. Raila Odinga had this to say:

"Gender equality is a human right issue. All men and women are born equal and they should be given equal opportunities by the society in order to realise their potential. Of course, the Bible talks of women having been moulded from man's rib. I think that is part of Jewish mythology, which has no place in modern society... We have not provided equal opportunities for men and women in this country by insisting that women must compete on equal basis with men. It is like asking two people to run a 100 (hundred) meters race and you put one competitor 50 meters ahead and then demand they compete equally. That is an unfair contest. Countries that have embraced Affirmative Action have experienced faster economic development because by doing so, you unleash a lot of energies and human resources" (*Parliamentary Hansard, April 12th 2000*).

Hon. Martha Karua also contributed to the debate and supported it. The motion was debated but parliament was not willing to take responsibility and just handed over the problem to CKRC. They argued that since the Constitutional Review was beginning, the clerk of the National Assembly should write to the CKRC and ask them to ensure that the recommendation to implement the Affirmative Action for women's representation was part of the Review Process.

The suggestion to hand over the problem to CKRC was adopted and that was the end of the story as far as parliament was concerned. Nevertheless, women recorded some gains, thanks to the Ninth Parliament. These include the passing of the Gender Commission Bill; the passing of the Gender policy; Sexual Offences Act; and the Presidential Directive to implement one third representation for women.

These gains notwithstanding, the same parliament stalled the Bill for amending the constitution to allow for the creation of the 50 seats for women in parliament.

Summary

This chapter has contextualised Women's Movement in Kenya and highlighted some efforts to influence parliament to take on women's representation. It has focused on the various efforts by women to clear the field for women's representation. The chance for women to focus on representation brought them together irrespective of ethnicity, class and political affiliations. The focus to address the legal and institutional framework for women in decision making, particularly in elective positions, held the women together. It also gave them the wisdom to include those excluded by the so-called 'Democratic Institutions' that have thrived on unequal playing ground. It prepared the ground for women's negotiation for space in constitutional review process. They were already co-ordinated, focused and had defined their agenda clearly.

Women's organisations and women leaders who jointly had formed a formidable Women's Movement, were now ready to claim their place in constitution making. Chapter II focuses on women's struggle to be in the review process.



Negotiating for Space in the Constitutional Review Process

The struggle for a people driven process had been going on since the amendment of Section 2 A of the constitution. In 1992, Kenyans hoped that a comprehensive review of the constitution would have taken place before the 1997 general elections. Instead, we got the Inter Party Parliamentary Group (IPPG) package which was seen as a compromise between the opposition and government. It was the same year (1997), that Phoebe Asiyo's motion, discussed earlier, was tabled in parliament and defeated; the same year when the Women's Political Caucus, and a strong political Women's Movement, was born. This chapter captures participation of women in negotiating legislative framework for the constitution review process.

The Collaborative Centre for Gender and Development (CCGD) organised the first meeting on women and constitution making. This meeting took place in January 1998 at the Silver Springs Hotel, Nairobi. The aim of the meeting was to understand issues related to constitution and constitutionalism and how women could participate. The meeting was addressed by two well known constitutional lawyers, the late Prof. Okoth Ogendo and Mr. Wachira Maina. Prof. Ogendo was a very broad-minded scholar who made very complex things very simple for non-lawyers. This is what Prof. Ogendo did for women at that meeting: he let them understand, in the simplest way possible, what a constitution is, how it is made and by who and women's role in the process. In my view, Prof. Okoth Ogendo was a unique scholar.

At this meeting, Prof. Ogendo made women realise the need to equip themselves with relevant knowledge in the process of Reviewing the Constitution. Women had already identified the need to have both technical and lobbying teams within the Women's Movement to spearhead mainstreaming women and women's experiences and perspectives in the process. They negotiated with the team of experienced individual women who would work as door and window openers. They decided to organise themselves to negotiate to be part of the process. They, like the rest of Kenyans, hungered for more democratic institutions, for development of a constitution that would promote better social, economic and political order with less powers centred

around the executive and where resources were going to be distributed fairly. Primarily, however, women saw the opportunity to ensure that their issues, for which they had struggled for a long time, were entrenched in the New Constitution. Hence, the discussion to negotiate a double covenant for them.

After the first meeting on women and constitution making, women were ready to begin the long, political journey of preparing the field for planting.

Women at the negotiation process

After the 1997 elections, the debate on the nature and process of coming up with a comprehensive review of the constitution was started. Parliament debate the issue and in 1998, appointed a 25 member Inter-Party Committee headed by Attorney General Amos Wako to seek the views of individuals and organisations on the amendment of the constitution. This culminated in a national meeting at Bomas organised by the Attorney General (AG) in May 11th 1998. Women were there to make their case. They did the same in Safari Park Consultation Sessions I, II, III and IV. It was at these consultations that women negotiated under the leadership of Women's Political Caucus for both their participation in the process and also the structures that would facilitate the review of the constitution. Credit goes to women for coming up with the District Strategy and Constituency Level Structures in order to ensure maximum participation of the people in the constitutional review process. The following list indicates the names of some of the women who were intensively involved in this process:

Hon. Phoebe Asiyo	Mrs. Hilda Orimba
Hon. Zipporah Kittony	Mrs. Abida Ali Aroni
Hon. Catherine Nyamato	Ms. Nancy Baraza
Mrs. Jael Mbogo	Hon. Adelina Mwau
Hon. Martha Karua	Ms. Tabitha Seei
Mrs. Martha Koome	Hon. Julia Ojiambo
Mrs. Jane Kiano	Ms. Jane Ogwapit
Prof. Jackline Oduor	Ms. Jane Ogot
Prof. Wanjiku Mukabi Kabira	

These women, among many others, moved into the process with all the energy and expertise that they could marshal.

Constitutional review stakeholders consultation at Bomas (May 11th 1998)

In 1998, when the Attorney General called for the meeting of stakeholders, the Women's Political Caucus held a meeting at the Silver Springs Hotel to discuss its representation at this stakeholders' meeting, which was meant to set the pace for the review process. Women agreed that they would not go as Women's Political Caucus because that meant having two representatives only

at the stakeholders' meeting. Instead, they talked to the AG and made him understand that the Caucus was not an NGO but a network of women's NGO's and therefore we needed to get more seats for women's organisations. Women had begun to adopt strategies that would increase the numbers in all negotiation meetings. The AG gave women a slot for chairing one of the sessions and requested me to chair it. Therefore, I chaired the session for Religious Groups assisted by Adelina Mwau, a great gender activist whose work goes back to the 70s. We presented women's position. At the end of this meeting, women were recognised as stakeholders, same as faith-led organisations, political parties, professional societies, etc. We must therefore recognise the role of the AG, Amos Wako in this process because he consistently stood by the women.

Women's participation at this initial Bomas meeting was not without its comic side. When women reached the venue, they could not find their registration desk. The officers in charge did not know where an NGO entitled "Women's Political Caucus" could be placed. The Caucus was neither listed in the Civil Societies' nor the Political Parties' stand. Eventually, they found the Caucus label tag among Community-Based Organisations (CBOs). Apparently, no one among the organisers could recognise this animal called "Women's Political Caucus". Women's organisations were known to focus on *maendeleo* (on development), kitchen gardening, and rural development, but not on political caucusing. Supposedly, women should be busy with community level work and looking after children.

Another comical incident was when women were asked to present their position on the Review Process at the same meeting. As mentioned earlier, Adelina Mwau and I presented women's position papers. As Mwau and I sat on the high table and I was making the presentation, Mwau held a placard reading, "We want Affirmative Action," until from where the women were sitting, Prof. Jackline Oduor, one of the Caucus members, pointed at the placard. Mwau and I consulted and agreed that we did not need the placard because we had been given the official platform to make our presentation.

Sometimes, we women are like the slaves who, after having been in slavery all their lives, did not know where to go or what to do once they were freed after emancipation. We laughed about it afterwards, recognizing that we had been so busy struggling on all fronts that even when the door was open, we continued knocking at it.

This consultation of stakeholders was critical in setting the pace and putting women at the centre of the review process; but it was not without a lot of effort from the women. They had held meetings before, educated themselves and strategised at all stages. At the consultation, Women's Political Caucus was

very well prepared. It was a meeting which had many disagreements and walk-outs.

Lucy Oriang, a journalist noted:

“Unlike in the past, women will contribute to defining the vision of Kenya and together with men lay down the basic principles upon which Kenyans want to be governed” (*Daily Nation*, May 11th 1998).

Thus, women had started to operate from the centre and even the media had moved women’s issues to the front page and they had started appearing in the editorial pages too. Women had made themselves players in the Constitutional Review Process. They had begun the process of operating from the centre.

Women and the Constitution Review Law 1998/1999

As noted earlier, the consultations of stakeholders at Bomas were followed by four stakeholders consultations at Safari Park consultations. During these consultations, women, together with political parties, religious groups, civil society organisations, among others, continued to negotiate for their space in the review process. Having been accepted at the consultations of stakeholders at Bomas, women had the opportunity to negotiate for their inclusion into the Drafting of Review Bill at Safari Park. It was clear that women needed various stakeholders to work with. Eventually, they negotiated with all stakeholders and ended up with five out of twelve slots that constituted the Draft Team. This was no mean achievement. The five women were:

Hon. Martha Karua	Mrs. Abida Ali Aroni (lawyer)
Hon. Phoebe Asiyo	Mrs Martha Koome (lawyer)
Hon. Zipporah Kittony	Prof. Wanjiku Mukabi Kabira

Thus, women had successfully negotiated for space at the drafting table. With women like the five listed here and with support from the male members of the committee, it was not surprising that the Bill to review the then existing constitution was the most gender sensitive instrument/law that Kenya could have. The male members of the Review Bill Draft Team were:

Hon. Julius Sunkuli – KANU	Mr. Erastus Wamugo – Youth
Hon. Joseph Kamotho – KANU	Hon. Gitobu Imanyara – Opposition
Hon. Bonaya Godana – Opposition	Hon. George Anyona – Opposition
Prof. Kivutha Kibwana – Civil society	Bishop Philip Sulumeti – Faith-based organisations (Chair)

The team started the process of developing the law to review the constitution under the Chairmanship of Bishop Sulumeti. Women attended these sessions religiously and strategised at every stage. At the drafting stage to develop the law, women representatives ensured:

- a) That women supported a structure that ensured consultations with Kenyans starting from constituency to the district and to national levels;
- b) The Affirmative Action for women's representation at all levels was entrenched;
- c) Women's organisations as nominating bodies were entrenched in the law;
- d) That 30 per cent of the 25 per cent of civil society representation went to women;
- e) That 30 per cent of the commissioners would be women;
- f) That 30 per cent district representations at the National Conference were women, that is, at least 1 out of 3 district representatives were women.

I should emphasise that these gains by women at the Safari Park negotiations should never be taken for granted. They formed the basis for women's negotiations throughout the process. They are the reason for the gains in the various constitution drafts and the final constitution which is women friendly.

The gains ensured that women were in the review process, in the Constitution of Kenya Review Commission (CKRC), the National Constitutional Conference at Bomas, district representatives at constitutional constituency committees, and as chairs of committees at the conference and other review structures. It was also because the law insisted on women being in the commission that the Affirmative Action of 30 per cent women's representation in the Constituency Constitution Committees (3Cs) was implemented by the CKRC.

Thus, in the Bill to review the constitution, negotiated through the process which began at Bomas in May 1998, through Safari Park I-IV and drafted by the Sulumeti Committee with the participation of five women out of the twelve members; Affirmative Action was entrenched. The AG was hopeful that the Bill would be passed by parliament and then the appointment of the proposed twenty five commissioners would be done. The Bill proposed that thirteen of the commissioners be nominated by parliamentary political parties; women's organisations would nominate five commissioners, all protestant churches would nominate one, Muslim Consultative Council and the Kenya Episcopal Conference would nominate one each. Four others would be nominated by civil society organisations.

Although at the Bill's implementation level the percentage for women was not what women expected, the negotiations at Safari Park had formally entrenched the principle of Affirmative Action in the proposed law. For women who had always negotiated from the side, this was a milestone. Women's organisations that were to nominate the five commissioners and who were in the review were:-

- The Women's Political Caucus;
- The League of Kenyan Women Voters;
- Federation of Women Lawyers–Kenya;
- Collaborative Centre for Gender and Development;
- Maendeleo ya Wanawake;
- Widows and Orphans Welfare Society of Kenya;
- National Council of Women of Kenya; and
- Muslim Consultative Council Sisters Network.

Women had learnt to use their networks when they wanted to push their issues from a united front and to separate when they wanted greater representation. The women at Safari Park worked together for a common goal. They negotiated with a purpose. They became a power that not even Kenya African National Union (KANU), the then ruling Party, could ignore. Political parties tried to negotiate with women for different positions. At one time, women were amused that the then KANU stalwarts like Hon. Kalonzo Musyoka and Hon. Joseph Kamotho would come to negotiate with the women, promising to support women position if women supported theirs. Women had truly emerged from the shadows and were demanding their space on the negotiating table.

As has been mentioned earlier, the AG was a great supporter of women's cause. He understood the issues at hand and supported women both at the stakeholders consultations at Bomas (1998) and in Safari Park stakeholders consultations I-IV. At the close of the day after the consultations, the AG would efficiently summarise the various agreements. Women kept ensuring that the AG knew what the proposals by women were. If an issue was raised and nobody argued about it, he would put it down as agreed upon. By the time of summaries, those impatient would have gone, others would be tired but most women would wait up to the end.

In October 1998, the AG published the Constitution of Kenya Review Bill. He wanted the review to begin by December 1998. Women were celebrating their success in negotiating for their inclusion in the process. They had demonstrated their power to negotiate with other stakeholders and the law was being tabled in parliament, a law that the stakeholders had negotiated for.

Kenya women must forever appreciate the struggle that women at Safari Park meetings went through. They coordinated themselves on a daily basis, prepared their positions, met before the meeting to agree on positions they would take, and agreed on who should lobby who. Often, the team would have senior women political leaders like Hon. Phoebe Asiyo, Mrs. Jael Mbogo, and Hon. Charity Ngilu, among others. They would lobby KANU ministers and other senior political leaders.

The battle for control of the selection of women commissioners

The law negotiated at the Safari Park consultations was finally in place. Women were at the centre of the structures but the law did not go down well with KANU party in particular. KANU wanted the provision that made the Kenya Women's Political Caucus (KWPC) the coordinating body for nomination of women commissioners to be amended to replace KWPC with Maendeleo Ya Wanawake Organisation (MYWO), although Maendeleo was a member of the Caucus and was not complaining. KANU argued that the Caucus was not a registered body and could therefore not articulate women's views.

The following reflects the issues debated in parliament in relation to the organisation that could represent women:

November 24th 1998 second reading of the Constitution of Kenya Review Commission (amendment) Bill. During the debate, Hon. Amukoa Anangwe, the then Minister for Cooperative Development said:

“Sir, I can see that they have created space for women's organisations in the review process which is fine. But many of women's organisation represented in this bill are all urban based. They speak one language. They all reside in urban areas and yet the bulk of Kenyan women reside in rural areas. All I am trying to say is that, as we restructure representation of the various actors and interest groups like Kenyan Women's Political Caucus, League of Kenya Women voters, Collaborative Centre for Gender and Development, Federation of Women Lawyers and the National Council of Women of Kenya should be represented by one person. The other four places should go to Maendeleo ya Wanawake which has grassroots support. Therefore, they have no right to take the places which should really be due to groups which are in the rural areas” (*Parliamentary Hansard, November 24th 1998*).

As evidenced here by Hon. Anangwe, men have always spoken on behalf of women. Public knowledge of women has always been articulated by men. Men claim knowledge about and on women without any regard to what the same women think or feel.

However, other men have risen to the challenge of looking at the world in a different way. For example, Hon. Mukhisa Kituyi, in support of women, said:

“I wish to inform my eloquent colleague that Maendeleo ya Wanawake is a member of the Kenya Women's Political Caucus and its chairlady voluntarily and freely declared support to the position that they should mobilise the numbers through the Kenya Women's Political Caucus. If they are not complaining, what is the problem with the male honourable members who are complaining on their behalf” (*Parliamentary Hansard, November 24th 1998*).

Hon. Martha Karua explained to parliament that when the Constitution Review process began, women were not there; that women lobbied to get space for themselves; that the emergence of self proclaimed advocates of rural women were by then nowhere to be heard; and that women rejected those divide and rule tactics. Karua pointed out that the Women's Political Caucus, of which she was a member, was the largest umbrella organisation. Such organisation included Maendeleo ya Wanawake, Muslim Sisters Network, Federation of Women Lawyers and League of Kenya Women Voters. She informed members that the KWPC had already sent letters to all women's organisations all over the country including those at the grass roots level; and that those women did not need to be directed and divided by dictators.

Karua drew the attention of members to the definition of the Caucus in section 2 of the Bill and how the definition referred to those organisations in Part C of the first schedule which included:-

- Kenya Women's Political Caucus;
- Maendeleo ya Wanawake;
- League of Kenya Women Voters;
- Collaborative Centre for Gender and Development;
- Widows and Orphans Welfare Society of Kenya (WOWESOK);
- Federation of Women Lawyers, Kenya Chapter;
- National Council of Women of Kenya;
- Muslim Consultative Council Sisters Network.

She said the list was not exhaustive; and so:

“Let no woman fear and let no person instil fear in women that they are going to be left out.”

In addition, Karua stated:

“Let political parties give us one-third of the 13 slots they have ... to show that they are committed to the principle of Affirmative Action.”

There was dead silence. That is when we learnt it pays to have an articulate, courageous woman like Karua to be at the table when negotiations are being made. Clearly, her sharp mind often quietened those whose arguments towards removing women's powerful representation were based on prejudice and stereotypical thinking.

As the rest of the women sat in the gallery, it was clear that they could not be more ably represented in that house than they were through Hon. Martha Karua. They felt proud to be women.

Hon. Joseph Kiangoi, the then Assistant Minister for Research and Technology, was not satisfied with Hon. Karua's explanation and used a lot of time trying to tell the house that the definition of Kenya Women's Political Caucus was not clear. He was of the view that this was not an organisation

which would take the responsibility of having women representatives nominated through them. He proposed that the nominating body be Maendeleo Ya Wanawake because it was found “in every village”. He wanted the House to amend the law and remove the Caucus.

Hon. Beth Mugo on her part noted that women were tired of being told which organisation would lead them. She reminded parliament that:

- a) Organisations listed in the Bill were national organisations;
- b) Those called “Elite Women” had a lot of grass roots support;
- c) That the Caucus was not an organisation but a network of national women’s organisations grouped together in order to lead the women in the review process;
- d) That it was a fallacy to say that the Women’s Political Caucus was controlled by a few women.

Women sitting at the gallery were elated listening to women parliamentarians fight the battle for women’s right to choose who would take the responsibility of nominating women commissioners to the review process. Women MPs were the only ones who could articulate these views with such knowledge, experience and gusto in parliament.

The motion to remove Women’s Political Caucus as the nominating body and replace it with Maendeleo ya Wanawake was defeated. However, the battle for women’s representation was far from over.

Women’s nominations of the five women commissioners (1999)

Under the leadership of Women’s Political Caucus, women held a meeting to deliberate on the nomination process. A technical team came up with a criterion for nomination of commissioners, their terms of reference, the methodology and process of nominating them.

Having agreed on the terms of reference for the commissioners, a meeting of women’s organisations was held and the criteria debated, amended and validated. The criteria included:

- Candidate’s demonstrated commitment to the women’s agenda;
- Leadership within women’s organisations;
- Experience in gender training and gender analysis, among other skills;
- Candidates understanding of the critical issues related to women and reform process;
- The team had to include politicians, lawyers, those with experience in social affairs, among other criteria.
- In addition, candidates had to be proposed to the Credential Committee by recognised national women organisations.

The meeting then went ahead and nominated the vetting committee. The following were nominated as members of the vetting committee:

- Hon. Martha Karua – MP and Chair of the Committee;
- Hon. Charity Ngilu – MP ;
- Hon. Zipporah Kittony – Former nominated MP and Chair, Maendeleo ya Wanawake;
- Hon. Catherine Nyamato – Former nominated MP;
- Mrs. Jane Kiano – Former Chair, Maendeleo ya Wanawake;
- Hon. Rose Waruhiu – Former nominated MP and Assistant Secretary General of Democratic Party of Kenya;
- Mrs. Martha Koome – Chair of FIDA.

This was a strong team of women who brought different expertise to the Credentials Committee. It was clear women had a powerful committee that could weather the political battles ahead. What women did not know was that the battle that had started with the effort by KANU to replace the Women's Political Caucus with Maendeleo ya Wanawake in the Review Act was only the beginning of efforts to control the nomination of the women commissioners.

The Credentials and Vetting Committee sat and developed their own terms of reference. The Committee went ahead and interviewed women whose names had been submitted by women's organisations. A total of 46 CVs had been submitted by women's organisations. Among those organisations that submitted the names were:

- The League of Kenya Women Voters;
- The Collaborative Centre for Gender and Development (CCGD);
- The Federation of Women Lawyers;
- Maendeleo ya Wanawake;
- The National Council of Women of Kenya;
- Widows and Orphans;
- Kenya Professional and Business Women;
- Muslim Consultative Council Sisters Network;
- The Women's Political Caucus.

The team, chaired by Hon. Martha Karua, held a series of meetings and did the short listing, agreed on the criteria for nominations and then carried out the interviews. After the interviews, they released the names of the successful candidates on the January 8th 1999. The proposed CKRC women commissioners were:

- Hon. Phoebe Asiyo;
- Prof. Wanjiku Mukabi Kabira;
- Ms. Nancy Baraza;
- Ms. Abida Ali Aroni;

- Ms. Salome Muigai.

The names were released to the media and the battle from KANU politicians was fast and furious. Having failed to prevent the Women's Political Caucus from being the vehicle for nominating women commissioners, KANU Parliamentarians declared the nominees unacceptable. They said those women were urban elite women and did not understand rural women, among other accusations.

At a meeting of the Caucus at Silver Springs Hotel on Friday, January 23rd 1999, 32 women's organisations endorsed the above five nominees who were picked under the auspices of Women's Political Caucus, there were disputes and walk-outs. Dr. Julia Ojiambo was chairing the meeting. Coast, Rift Valley and Eastern provinces said they were not represented. Hon. Ngilu tried to tell delegates that the eight provinces could not all be represented but she was booed. Hon. Adelina Mwau from Eastern province pleaded with women saying, *"We have a lot to do for this country and we cannot be divided."* Women opposed to the Caucus nominees would not hear of it and later called a Press conference at Maendeleo ya Wanawake offices at which they expressed their disappointment. Those who addressed the conference were Orie Rogo Manduli and Lilian Mwaura of National Council of Women of Kenya, Rukia Subow, Margaret Kamar and Rahab Muiya of Maendeleo ya Wanawake. Luckily, these women were later to come to the fold and push the agenda forward with the rest of the Caucus.

Mrs Zipporah Kittony's troubles with KANU

The KANU government did not accept nominees from the Caucus. KANU's unease with the nominations was compounded by their view that Women's Political Caucus was an amorphous body which the political parties did not understand; so they wanted to remove it from the law. This had failed. Secondly, the Caucus had elected the women that KANU would not have wanted. Notably, none of the other stakeholders were questioned on their nominees though most of them had no criteria as clear as that of the women. Ironically, even Maendeleo ya Wanawake was in the nominating body but a lot of pressure was put on Hon. Zipporah Kittony, the Chair of Maendeleo ya Wanawake, to denounce the women's nominees. She was asked by KANU, "What were you doing in that Committee? Why were you outwitted?" Kittony later confided that she had to leave Nairobi and go to her home in Kitale to keep away from the pressure to denounce the women nominees. But hats off to Kittony — she stuck to her guns. In the same way she stood by women during the debate on the motion to remove the Caucus from the Review and replace it with the Maendeleo ya Wanawake representatives, she stood by the women amidst a very hostile environment. Those women sitting at the speakers' gallery during the debate to amend the Review Law to replace the Caucus with

Maendeleo ya Wanawake saw the pressure that Kittony, Mwewa and Ndetei, former nominated MPs, were under. They, however, stood their ground and rejected calls to support the motion to reject the Caucus. This was the second time Kittony and other women did us proud and decided “woman” was their party.

Women’s day in court over the nomination of women commissioners

On January 25th 1999, the High Court granted seven women leaders court orders restraining the Attorney General from registering the five Caucus nominees. Justice Mary Angawa, however, granted the women orders for only four days within which to file a substantive application. She wanted the women, namely: Orie Rogo Manduli, Rukia Subow, Margaret Jepkoech Kamar, Rahab Muia, Lilian Wakiiya Mwaura, Mercy Mwamburi, Tabitha Seii, and their lawyer, Stephen Musalia Mwenesi, to understand that the court intended to expedite the matter so as not to interfere with the Review Process. These women had argued that the Caucus nomination process was flawed, that it did not cater for all the women in the country. They further argued that those nominated did not represent women in total and that the Caucus was neither registered as a society nor did it exist by an act of parliament,” (*The People Daily*, January 27th 1999). President Moi also criticised the nomination of women commissioners by the Caucus saying that they could not represent the rural women.

The case was heard by Justice Aganyanya. The Caucus’ defence lawyers were a team of competent women lawyers led by Rachael Omamo supported by Martha Koome and Abida Ali. The lawyer hired by Maendeleo Ya Wanawake and the National Council of Women of Kenya was Steve Mwenesi. The judge had a hard time distinguishing between women groups, community based organisations, women’s organisations, etc. The lawyer for the Maendeleo ya Wanawake had the same problem. It was interesting to sit on those hard benches and listen to presentations from both sides. The accusation was that the nomination of the five commissioners, namely; Phoebe Asiyo, Nancy Baraza, Abida Ali Aroni, Salome Muigai and myself was not proper. That the nominations should be revoked and the process started again. For the judge and Steve Mwenesi, this was a different world. They did not, as they normally do, have precedence. They hardly understood the complex relationships of women’s organisations. Conversely, the defence lawyers were at their best. This was their world, a different world from that of Steve Mwenesi and Justice Aganyanya. Mwenesi referred to a precedence related to some cricket match, somewhere in Latin America. Those Caucus members who were not lawyers could not figure out what a cricket match had to do with them. Fortunately, the judge did not seem to be impressed either. The media was having a field day. Even the then president of Kenya, Mr. Daniel Arap Moi, talked about the issue

in public. The judge was not amused. He castigated those who were discussing the matter in public while it was in court. The women lawyers supported by FIDA did a commendable job. The Judge ruled that the women Commissioners were properly nominated and subsequently upheld their nominations of Phoebe Asiyo, Nancy Baraza, Abida Ali Aroni, Salome Muigai, and Wanjiku Mukabi Kabira (myself).

Women's shuttle diplomacy and the stalled review process

Having won the court battle, the Women's Political Caucus had to resume engagement with the rest of the stakeholders. However, the process stalled soon after (1999). Political parties could not agree on how to distribute their 13 seats. Again, women organised themselves to see how they could re-start the stalled process. They did not just wait for it to be started by others. They formed a women's negotiating team that had both technical expertise and lobbying skills. The role of the team was to identify critical stakeholders in the review process and consult with them to ensure that the review process was back on course for Kenyans to realise the new constitutional dispensation they had yearned for, for so long.

Those who formed the negotiating team to re-start the stalled Review Process were:

- Hon. Julia Ojiambo – former Member of Parliament and Assistant Minister;
- Hon. Phoebe Asiyo – former Member of Parliament and Chair of Women's Political Caucus;
- Prof. Wanjiku Mukabi Kabira – Convenor of women's negotiating team;
- Ms. Martha Koome – Lawyer and the then chair, FIDA;
- Hon. Martha Karua – Member of Parliament;
- Hon. Catherine Nyamato – Former Member of Parliament;
- Ms Nancy Baraza – Lawyer;
- Mrs Abida Ali Aroni – Lawyer and Chair, Muslim Sisters Network;
- Prof. Jackline Oduor – Lecturer, University of Nairobi;
- Hon. Charity Ngilu – Member of Parliament;

Most of the meetings organised by this team were coordinated by Ms. Jane Ogot, the then Coordinator of Women's Political Caucus. The following section focuses on some of these consultations.

Women's consultations with political party leaders

The negotiating team held high level consultations with political party leaders, religious leaders and other stakeholders. Some of the individuals they held meetings with include:-

- Hon. Mwai Kibaki – Then leader of the official opposition and Chair of the Democratic Party;
- Hon. Norman Nyaga – The then whip of the opposition;
- Hon. Raila Odinga – Then in the KANU government.
- Hon. Prof. George Saitoti – Then Vice President in the KANU government;
- Many other political leaders.

The meeting with political party leaders was to try and persuade them to agree on the distribution of the 13 seats allocated to them by the Safari Park consultative forum. Both Hon. Mwai Kibaki and Hon. Raila Odinga agreed that this was necessary and asked us to talk to the other party leaders.

At the meeting with Prof. George Saitoti where the team was led by Hon. Phoebe Asiyo and accompanied by Hon. Julia Ojiambo, Prof. Jackline Oduor, Hon. Catherine Nyamato and myself, the then Vice President explained the willingness of KANU to continue with the process. We enquired what it would take for KANU to move ahead with the Review process and he informed us that discussions were going on. He appreciated our visit and noted that we could help the Government in the area of gender mainstreaming because, as he said, “they did not have technical expertise but they were committed to the Constitutional making process.” We also informed him about our consultation with the leader of the official opposition, Hon. Mwai Kibaki who had told us in his office in parliament building that official opposition was ready for discussion in order to re-start the process.

Having done the targeted consultations and with the support of the Women’s Political Caucus, the negotiating team organised a meeting of Political Parties at the Silver Springs Hotel attended by all political parties. We had also requested the religious leaders to attend. Mutava Musyimi, the then Secretary of NCKK chaired the meeting. We considered this a big success because we had called all political leaders to come and negotiate and they had actually come!

Women continued to work closely together and often when the process would not move, they would quietly begin negotiating with the various stakeholders.

Women’s consultations with religious leaders

The Women’s Negotiating Team held many consultations with religious leaders. Among those we consulted were:

- Bishop David Gitari – The Anglican Bishop;
- Bishop Ndingi Mwana Nzeki – The Catholic Archbishop of Nairobi;
- Bishop Zablon Nthamburi – Methodist Church of Kenya;
- Rev. Mutava Musyimi – Secretary General, NCKK;

The women team, in which I was a member, went to consult Bishop Gitari, at his own home in Kirinyaga District. We found that Gitari had just arrived from Australia. In the team to visit Gitari were Hon. Charity Ngilu, Adelina Mwau, Martha Koome, Martha Karua and myself. The Bishop was shocked to see us and wondered what the message was. After a cup of tea, we explained our mission. Hon. Charity Ngilu told him about our concern with the Constitutional Review Process and parliament's determination to take control of the process. We explained the urgent need for a people driven process. Bishop Gitari trusted us and decided what we were saying was making sense. He felt it was urgent that he put his weight behind the people driven process. He brought pen and paper and said, "Prepare a press statement; because I have been away, it is you who know what has been happening."

We prepared a press statement and faxed it to the media. Our press release made the headlines the next day. In it, Rev. Gitari accused parliament of being a house of wolves to whom one could not send a sheep (the constitution). The wolves would just devour it. This statement was supported by other stakeholders. The message was that the constitution had to be negotiated, and that we had to remain true to the people driven process.

At one of the consultations in his office at the Holy Family Basilica in 1999, which Dr. Eddah Gachukia attended, the team being led by Hon. Phoebe Asiyo, we had heart to heart discussions with Bishop Ndingi Mwana Nzeki about the frustrations of the review process but as always, he would say, "*We shall pray and pray. Nothing is impossible with God.*"

We met Rev. Mutava Musyimi in his office in Church House. We had very good consultations in which Rev. Musyimi encouraged us to keep dialogue going and assured us that religious leaders would work closely with women.

Women's consultations went on all the time. Consultations is part of the invisible work that women have continued to do to sustain this nation.

But the KANU Government was not about to give in to the rest of Kenyans and was determined to ensure the people driven process was killed and the parliamentary process was introduced. Consequently, the process stalled. The Civil Society and Religious leaders regrouped under the Ufungamano Initiative to revive the process and ensure a people driven process.

Women and the people driven process

Women, like many other civil society organisations, and indeed Kenyans as a whole, were of the view that not many Kenyans had participated in the making of the Lancaster House Independence Constitution and so the need to seize the opportunity that had been availed by the making of a new one. Hence, the reason for the name "People's Commission of Kenya (PCK)" which was

established after the negotiations at the Safari Park meeting failed to take off and after parliament began its own process which the rest of Kenyans called “a parliamentary driven constitutional process.” Religious leaders, civil society organisations and women’s organisations stuck to the people driven concept. Actually, the constitution became “Wanjiku’s constitution”; a constitution for ordinary Kenyans who had become victims of dictatorship, of inequalities, of violence, of economic and social ills, among other ills.

Women saw people’s participation as ensuring free participation of Kenyans in their communities’ activities, enjoying the benefits of their labour and making decisions in all matters that affected them. It meant participating in the process of Constitution Review as well as in the final product. We felt it was important for people to participate and enjoy the right to influence the formulation and implementation of all public policies and in negotiating their co-existence.

Women felt that they had a right to be represented by women of their choice in the same way that persons with disabilities had a right to be represented by those in their category who would understand them better. Similarly, minorities had a right to be represented by minorities. We argued that including minorities and women in the process provided diversity and therefore enriched the wider society by challenging the dominant ideas and values and by giving various categories an opportunity to bring their experiences and knowledge to the Review Process. Only in this way could society be opened up to new ideas, promote debate and protect it from narrow mindedness. That is why women had negotiated with other stakeholders to ensure they participated at all levels.

This, we argued, would be people driven if all categories of society were to participate and bring their experiences on board. We were not interested in the parliamentary driven process that the Parliament had proposed. The faith-led organisations, civil society, opposition political parties and women’s organisation started the People’s Commission of Kenya. This was led by the Ufungamano Initiative.

Ufungamano and the People’s Commission 1999/2000

The Ufungamano Initiative, led by religious leaders swore in office the commissioners of the People’s Commission of Kenya. Commitment to the People’s Commission was demonstrated in word and deed by the people. It was the perseverance of people’s commissioners and the Ufungamano initiative for 18 months that showed parliament that the people-driven constitution was going to continue with or without the government or parliament. Of course, the debate on its legitimacy was always raised but we always argued that the people of Kenya gave legitimacy to the process and indeed their support was a clear indication that it was their process. In addition,

we argued further, parliament was given legitimacy by the people and the people had a right to withhold their support if need be.

In Ufungamano, “The People’s Commission”, as it was popularly known, was led by Oki Ooko Ombaka, a man of great courage, commitment and diligence.

The PCK Commissioners were:

- Oki Ombaka – Chair;
- Abida Ali Aroni – Vice chair;
- Nancy Baraza – Women’s organisations;
- Wanjiku Mukabi Kabira – Women’s organisations;
- Salome Muigai – Women’s organisations;
- Charles Maranga – National Democratic Party nominee;
- Joyce Umbima – From Kenya Alliance for the Rights of Children;
- Adelina Mwau – National Alliance Party of Kenya;
- Amina Abdalla – Democratic Party;
- Said Athman – Muslim Consultative Council;
- Ibrahim Lethome – Muslim Consultative Council;
- Zein Abubakar – Safina Party nominee;
- Juma Kiplenge – Lawyer from Nakuru;
- Riunga Rainji – Catholic Church Representative;
- Sheikh Baricha – Ford Kenya Representative for North Eastern Province.

The People’s Commission was not funded—it was a people’s process. Support came from all corners of the country. Religious organisations, which were led by Rev. Mutava Musyimi, the then Secretary General of the National Council of Churches of Kenya, gave great support to the commission. Rev. Mutava Musyimi led the Coalition of Muslim Consultative Council; Episcopal Conference of Kenya; and the Seventh Day Adventists, among other religious organisations. He ensured that the commissioners had a meeting room at Ufungamano. The only thing we never missed in all our meetings at Ufungamano House was tea and *mandazi*. We walked closely and steadily without financial resources.

We went out to all the eight provinces to collect views. But for some reason some people were not happy with the People’s Commission. In one incident, a petrol bomb was put just next to Oki Ombaka who was visually impaired at the time. When it exploded, it was Hon. James Orengo’s body guard, who God had endowed with size and strength, that picked up Ombaka and took him to safety. Ombaka would later die of natural causes in August, 2001 before he could celebrate the birth of the new constitution.

In many parts of the country, we travelled in run down *matatus* for we could not afford to hire vehicles. It was the church and other religious leaders, civil

society organisations, opposition parties, among others, who organised, cooked for us and mobilised the meetings of the communities and presentations of their views. In places like Embu, the stadium was full and the citizens presented their views until six in the evening.

One of the key principles leading the People's Commission and later CKRC was the concept of people driven Kenyan Review Process. It was called the 'Wanjiku Constitution', she of the villages, slums and pastoral areas. She who was poor, non-literate and whose 'God' guided the process. She whom the dictatorial KANU government had reduced to abject poverty, who suffered the results of a corrupt, inhuman and violent system. 'Wanjiku' came to represent the common *mwana* of both gender.

Women commissioners in PCK and consultations with KANU

As commissioners in People's Commission, women continued to negotiate with others in order to move the process forward. They consulted often. At one time when Parliament and Ufungamano were negotiating on the number of commissioners to be nominated, there was a stalemate. Abida Ali Aroni, Nancy Baraza and myself decided to engage the parliamentary group in consultations. We invited the great Moi supporters of the time, namely; Uhuru Kenyatta, William Ruto and Gitobu Imanyara for a drink at Pan Afric Hotel. We put our cards on the table and tried to convince them that it was in the interest of the nation to agree on the total number of commissioners to be nominated and the number the Ufungamano Initiative would nominate. William Ruto asked us, "What do you think will make religious leaders come on board with us? What kind of number do you think will be acceptable to them? Would nine (9) do?" Nancy Baraza responded immediately and said nine commissioners were not acceptable. She then went ahead to suggest that no less than 12 out of the 25 would please the religious leaders of Ufungamano. The gentlemen then consulted among themselves after which they came back to us and said they would report our proposal to their group. This was good progress for us. We followed up on the same with other leaders of the Parliamentary Group. Later, a deal was made between the parliamentary group and the Ufungamano group. Prof. Yash Pal Ghai was identified as the Chair. Ufungamano Initiative produced nine commissioners from PCK namely:

- | | |
|---------------------------|-------------------|
| • Oki Ombaka – Vice Chair | • Riunga Raunji |
| • Nancy Baraza | • Ibrahim Lethome |
| • Abida Ali Aroni | • Zein Abubakar |
| • Wanjiku Mukabi Kabira | • Charles Muraya |
| • Salome Muigai | |

An additional two were appointed. These were Arale Nunor and Musonik arap-Korir. The team joined the parliamentary group in 2000. Those identified by parliament were:

- Yash Pal Ghai
- Okoth Ogendo
- Idha Salim
- Paul Musili Wambua
- Keriako Tobiko
- Isaac Lenaola
- Bernard Njoroge
- Alice Yano
- Phoebe Asiyo
- Githu Muigai
- Z. Ayonga
- Kavetsa Adagala
- Mutakha Kangu
- Issack Hassan
- Domiziano Ratanya

The women commissioners and CKRC 2000-2005

As indicated earlier, four of us women commissioners, that is, Abida Ali Aroni, Nancy Baraza, Salome Muigai and myself came from the Ufungamano process to join the Constitution of Kenya Review Commission (CKRC) which came to be known as the Ghai Commission. The said four women and the other three who were appointed by the parliamentary group, namely: Hon. Phoebe Asiyo, Alice Yano and Kavetsa Adagala, never forgot that they went there to represent the women of Kenya. At every stage, they ensured women's agenda was taken on board. Whether it was discussion on the formation of committees of the commission, leadership in the commission, structures of the commission, civic education programme, analysis of the views, collection of the views or the compilation of data, women's issues had always to be taken on board.

I need to emphasise that it is not by coincidence that we ended up with very gender aware constitutional review drafts, that is, the CKRC Draft 2002, the Bomas Draft 2004, the Wako Draft 2005, the Harmonised Draft 2009, and the final constitution 2010. The unrelenting efforts of women are reflected in the process and the content of the drafts. The women in the commission worked hand in hand at all stages. Like women's organisations and women leaders during the negotiation of the law to review the constitution, women in the commission consulted on all issues relating to women. Indeed, women's organisations and women leaders continued to safeguard these gains at all stages.

In the CKRC, we were lucky that we had leaders like Oki Ombaka and Prof. Okoth Ogendo who did not need convincing about the need to take women's issues on board. Oki Ombaka and Prof. Okoth Ogendo, both brilliant lawyers and well informed in matters of gender, were great assets. They stood by women all the time. They actually led from the front at every stage. I do not remember any time in the five years I worked with Oki Ombaka and Prof.

Okoth Ogendo when they did not support the quest for women's agenda. We were also fortunate to have women with technical expertise, lawyers and social scientists who were well equipped to represent women in the CKRC.

During the Bomas Conference when discussions had become very political and were, in all practical purposes about to collapse, Aroni, Baraza and myself sought an appointment with Uhuru, then the Chair of KANU. We arrived at his office in Chancery Towers on Valley Road and were led to the boardroom. On opening the door, we were met by none other than William Ruto. I was in front and jokingly greeted him, "*How are you Uhuru?*"

He laughed and said, "When I heard that the three of you were coming to meet my Chairman, I decided it cannot be a small matter and I need to know what these three women are scheming."

Aroni responded, "This is not scheming, we have an official appointment with your Chairman."

We sat down and had discussions about what was going on at Bomas—the fight on various issues. We emphasised the need to reach a compromise and give Kenyans a new constitution. This was at a time when some groups were planning to walk away from Bomas to force the Attorney General to sign the Bomas Constitution draft. Ruto's answer was that President Kibaki had to come down and negotiate with the group that had been mobilised by them at Bomas. He said that for them, the fight was a contest between the Opposition and the Government.

Many times, the three of us had consulted with the Attorney General Amos Wako. Aroni, Baraza and myself would go to his home to find out what needed to be done to either initiate talks, remove hurdles that were blocking the process or just to learn the legal implications of some decisions that were being made. It had always been pleasant consulting with Wako. He always allayed fears and made us believe that the process would move forward.

We also had consultations with Hon. Raila Odinga. One of the consultations that we had with him was at Serena Hotel during the stalled process. Aroni, Baraza and I consulted with him, particularly on women's agenda, but also on the whole process. It was also a pleasure to consult with Raila. He was accessible and always ready to discuss with us. If we could not get him, we called Ida, his wife who would arrange a meeting for us.

We had many consultations with Hon. Simeon Nyachae also in his office on Riverside Drive. Often, it was in order to ask him to show us the way anytime the process was derailed. We also consulted on issues that were very controversial. Hon. Simeon Nyachae was always there for consultations. Also, we had meetings with Hon. Kiraitu Murungi the then Minister for

Constitutional Affairs and in whose docket the review was after the 2002 elections.

Women in the CKRC commission had the technical skills as well as lobbying skills. As indicated earlier, some of them had been involved in negotiating the law. This shows that it is advisable and important for women to have technical skills and knowledge when in a process as important as constitution making. Normally, such important political processes exclude women, either intentionally or by default. Exclusion of women has its consequences as exemplified in the following 2007 Court of Appeal case:

Civil appeal No. 75 of 2001 between Peter Mburu, Icharia and Priscilla Njeri Icharia. There were five male judges of the court, namely, Tunoi, Okubasu, Githinji, Waki & Deverell J. J. A. The five learned friends are reported to have overturned a judgment of a lower court by Judge Shields J. of 1993 which had given Priscilla Icharia 50 per cent of Twiga Hill Farm in Tigoni Limuru L.R No.6893 and 50 per cent to Icharia. The five gentlemen used outdated laws of 1882 Married Women Property Act which indicates that “Marriage or a marriage has no effect on the spouses’ property right.” They concluded that “The lower court trial judge erred in assuming that a special law of property exists and applied in spouses when they have property disputes.”

Dr. Kamau Kuria was the lawyer for the appellant, Mr. Icharia. Kuria asked the court to depart from the case in *Kivuitu vs Kivuitu*, which in a similar situation had given the spouse 50 per cent. He went ahead to review section 17 of 1882 Act and had many arguments why the wife should not get the 50 per cent. The judges, on February 2nd 2007, ruled that Priscilla Njeri should get 25 per cent.

If you read the arguments in this case, you would imagine that our courts live on planet Mars where they never heard of Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) or any other international conventions. That is the reason I have a lot of respect for lawyers like. The late Okoth Ogendo, the late Oki Ombaka, Hassan Issack, Isaac Lenaola, and Githu Muigai, amongst some of the lawyer commissioners at the CKRC, who have stopped being intellectual slaves of the law like the lawyer in Hassan Issack’s joke, which notes that: “two men saw the following text written on the gravestone, “Here lies a lawyer and a man of integrity.” One man asked the other, “Why have they buried two men in one grave?”

The case of *Icharia vs Icharia* quoted here is important in the sense that it happened at a time when Kenyan women had been struggling for their rights to property. The judgment in this case was sent to me by Dr. Eddah Gachukia who described it as “scandalous” and noted that; the facts tabled in the arguments needed to be circulated for women to see and encourage them to remain in the line of duty and continue guarding any gains made. For a long

time, an extremely conservative court system has continued to operate in Kenya.

I believe that if two of the five judges were women exposed to a different orientation in terms of law and practice that has emerged from Women's Movement world wide, Priscilla would have been treated fairly. With the implementation of the new 2010 constitution, Kenyans hope things will henceforth be different.

The very fact that the various constitution drafts: CKRC (2002); Bomas (2004); Wako (2005); Harmonised (2009) and the final referendum draft (2010) have so many gains is due to the commendable solidarity of women at every stage. The seven women in the CKRC commission put a consolidated effort at all stages to ensure that the process of collecting views and civic education took women on board. The rules and regulations governing the process also had to take gender into consideration.

Of the seven women commissioners in CKRC, three of them, that is, Abida Ali, Nancy Baraza and Alice Yano were lawyers; Salome Muigai, Kavetsa Adagala and myself were social scientists; while Hon. Phoebe Asiyo was a seasoned politician and long time leader of women. As mentioned earlier, five of the women were directly nominated by women's organisations. They later joined the civil society and religious leaders in Ufungamano to continue with the battle for the New Constitution. Without women's presence in the commission, the draft would have been very different. They stayed in the line of battle and continued to water and nurture the seeds of liberation planted by those who went before them.

Consulting the veterans

It must be stated that the proposal for Mixed Member Proportional Representation (MMPR) in the commission draft, Affirmative Action for women in parliament and local authorities, and women's entitlements in the Bill of Rights, among other areas, are a result of women's effort in the Commission. However, this was also with the support of male commissioners. So, even as we focus on women's voices, we need to acknowledge that we were privileged to sit with great men who have sacrificed a lot for this country. These included, Achieng Oneko, who was detained at different times for 16 years, and whose grandmother was captured by the lake side and sold to slavery. Achieng Oneko struggled against the British and was one of the Kapenguria six who were detained by the colonial government in Kenya. Others were Jomo Kenyatta, Kung'u Karumba, Paul Ngei, Fred Kubai and Bildad Kagia. Later, Oneko fell out with Kenyatta and was detained between 1969 to 1977 for joining Oginga Odinga in the Kenya Peoples Union (KPU).

Oneko shared his experiences with us. As he did this, one felt really humbled and challenged by the great task before us in the review process.

We had the pleasure of listening to Denis Akumu of the Dock Workers Union, a great trade unionist who was also detained by the British and later by Kenyatta. In our discussions during the process at a meeting with the commission in Mombasa, Akumu often reminded us that Coast Province had wanted autonomy in 1963; while the Maasai and the North Eastern Province communities wanted their own independence. He felt that because of corruption, decentralisation would be good for Kenya. Dr. De Souza, a lawyer who worked closely with the Kapenguria six; and Hon. Jeremiah Nyaga, who always wanted “one Great Nation”, also shared their experiences with us.

We also had the privilege of listening to Taitta arap Towett who once opposed the Moi leadership and was subsequently sacked from government. Towett drafted the Kenya African Democratic Union (KADU) party Constitution, a party which would later dissolve itself and merge with KANU. He was also detained by the British and by the Kenyatta government and believed that Kenya needed to become a Federal State.

Hon. Julius Gikonyo Kiano, a great thinker, often shared with us his views on the review of the constitution. When we were young, we used to be told that only Kiano had a PhD “in the whole world.” I was privileged to discuss some issues with Kiano and his wife Jane at their home. Kenyans know Jane Kiano for her legacy in Maendeleo ya Wanawake. She is a great mobiliser. She built Maendeleo House, near University Way where it stands as a testimony of the strength of Women’s Movement. Kiano would narrate the history of this country from colonial days to present and put our struggle in context. He was focused on the issues of structures of government, judiciary and better egalitarian development, among other issues. He insisted that we had to use the lessons learnt from the past in coming up with the new constitution. He was passionate about the Review Process and believed that the new constitution would chart a new path for Kenya. Shortly before his death in August 8th 2003, he still wanted to know what was happening about the Review—May God rest his soul.

Martin Shikuku, the famous veteran, was another one we had the opportunity to meet. He was very keen on the Independence Constitution. He said that like other KADU members at the Lancaster negotiating table, he wanted recognition of all ethnic communities in Kenya, hence his support of the Federal (*Majimbo*) system. “The people’s Watchman”, as he was popularly known, was very involved throughout the prevailing Constitution Review process. He also chaired a committee on the executive, one which generated a lot of heat at Bomas.

Robert Matano, another veteran, reminded us that at Lancaster House, the major issue for the Coast People was land and that he went to Zanzibar with the Kaya elders and negotiated with the Sultan of Zanzibar for the ten mile strip. He noted that the Ten Miles Strip issue at the Coast had never been resolved. He also said that the Constitution had to deal with the domination aspect of the bigger tribes. In one of the meetings with the commission, he said, “Kenya belongs to all of us and our children; there must be fair play.”

John Keen, another veteran we had the opportunity to listen to, also believed that land was the most sensitive issue in Kenya. In his view, most of the small ethnic communities in Kenya were afraid of big tribes such as the Kikuyu and the Luhyas. Therefore, there was need to address these fears. He too was detained in 1967 for advocating for an East African Federation.

There was also Priscilla Obwonya, the only woman in the delegation to Lancaster House. I was privileged to meet her although at that time, she was not well. So we did not get the opportunity to hear her views because she was too old and too sickly to remember Lancaster details when we visited her. At Lancaster House, in early 1960s, she was in the periphery, she being a woman. This second time, she was on the periphery too by being old and sickly but her presence at both negotiations of the pre-Independence constitution and the 2010 constitution that ushered in the Second Republic must never be forgotten, if not for anything else, as a symbol of resistance. We honour you Priscilla for your continuous presence.

These are some of the veterans the CKRC invited and we were able to interact with them. We acknowledged the fact that they too had remained in the line of duty in the struggle. All these great men, God bless them, shared their experiences with the commissioners. We were privileged to receive the baton from them and continue the race.

Twists and turns of the review process at the CKRC

The constitution making process was not devoid of drama and intrigues as the CKRC went about its work. For example, in 2002 when we were still collecting views from the people and soon after we had buried Oki Ombaka, we came back to the Commission from the field to be confronted by the media on the issue of a draft constitution. I was going to a meeting at Serena where Prof. Ghai was meeting “Friends of the Commission.” At the entrance, a journalist cornered me and asked me, “Is it true that you have completed writing the constitution?”

“We have not even completed collection of views from the people. How then can we have a draft? It is not true,” I said to him and literally dismissed him.

I then proceeded to the meeting to join Commissioner Ibrahim Lethome and Prof. Ghai. We were meeting Ambassador Bethuel Kiplagat and other “friends of the commission.” The next day, we all gathered for an emergency meeting at the CKRC boardroom. I sat next to Commissioner Isaac Lenaola, now justice Lenaola, and told him about the incident with the journalist. Isaac took his briefcase and took out a document entitled the “draft constitution.” “That is why we are here,” he whispered to me. “What?” I asked in disbelief. “Wait, Wanjiku, there will be fire works, just wait.”

A foreign and dubious “draft” constitution was tabled. The meeting was being chaired by Prof. Ghai. Many of us could hardly believe what we were hearing. We were dumbfounded. “It couldn’t be true,” we thought. The tension was however diffused by Prof. Okoth Ogendo, who was the chair of the drafting committee that was actually driving the process. Okoth said:

“There cannot be a draft constitution; no draft can be a draft of the Commission unless my committee, the drafting committee, has tabled it in the plenary, debated by and adopted by the same plenary. That draft would also have the seal of the Commission. End of Story.”

And with that comment, Okoth closed the matter and then added,

“When the draft Constitution of Kenya will be completed, it will be tabled here and these Commissioners will be there to decide.”

That was indeed to be the case. With those words, the fate of the “foreign draft” was sealed.

Prof. Ghai walked out of the boardroom. The rest of us were left wondering what had been going on while we were out in the field.

The issue of the “foreign draft” did not end there; there was another “draft” that emerged later at the Bomas Conference. It was once again rejected by the Commission. We had other similar experiences. For instance, Prof. Githu Muigai, who was chairing a committee on the *Constitutive Process*, prepared and approved the Preamble to the Constitution but what was circulated was another document not the one he had prepared. These incidents made the commissioners to be very careful throughout the process.

At the Leisure Lodge Hotel, where the Commission stayed for a number of weeks, Prof. Okoth Ogendo worked closely with a Ghanaian professor, Prof. Krab who was an experienced drafter. Prof. Ogendo kept strict control of the drafting exercise to ensure that only what was agreed upon would be launched. He told Nancy Baraza and myself the night before releasing the draft, “Today, I will not take a drink though I would love to. I have to keep my eyes open and focused on the document until tomorrow when we release it.” We told him that was not a bad idea.

Similar happenings were experienced at Bomas. One time, another “draft” constitution appeared and it was quickly denounced by the Commission through a press conference. The CKRC may never get the credit it deserves for being truthful to the constitutional making process, and for being accountable to the people because some of these intrigues never came out into the open but they played their part well in many cases. I was therefore not surprised when the 2010 draft constitution emerged with some words sneaked in. I had witnessed such strange intrigues before.

We keep talking about the constitution being a political process without realizing that it was not just the politicians in the ordinary sense of the word who were involved in intrigues. Being in the commission had its difficult moments too. Sometimes we would be divided along political lines, ethnic lines, ideological and gender lines. This was, however, expected. The advice we received from Raila Odinga at one point when we met at the Old Chamber with the Parliamentary Select Committee on the constitution, of which he was the chair, was, *“It is the business of the commissioners to reject the influence and stand firm on what you believe in. However, it is the business of the politicians to influence.”* There are many other examples of intrigues I could give but for now those will suffice.

The handing over of the 2002 CKRC Draft marked the end of an intense struggle by women to participate in the process and influence the decisions on proposals to the draft bill. It was a very intense period but again, the process ensured full participation of women in the structures of the review process, full involvement of women’s organisations in civic education and mobilisation of women to present at the constituency levels as well as women presentation of their views and proposals for the new constitutional dispensation. It was a process like no other. Women gave the process their all. They took the concept of “people driven constitution” literally.

Summary

This chapter has briefly captured Women’s Movement in its struggle towards defining women’s agenda, influencing the legislative framework for the review of the constitution and ensuring mainstreaming of women’s issues in both the process and the Draft constitution (2002).

Chapter three focuses on the next phase of this struggle.



The National Constitutional Conference

After the law to amend the constitution was put in place and the Constitution of Kenya Review Commission (CKRC), which was chaired by Prof. Ghai was constituted, intensive preparation of the structures to facilitate a people driven process was put in place. Then, massive civic education and mobilisation of the citizenry was done. The commission visited the 210 constituencies in Kenya to listen to the views of the people. We shall see some of these views expressed in chapters 4 and 5 of this book. However, a lot of this information is documented in various reports of the commission; reports that formed the basis for the other drafts that were to come later. The commission also produced the first draft constitution in 2002, which was termed the “CKRC 2002 Draft.”

As indicated earlier, women had ensured that out of three delegates from the districts, one was a woman. Women’s organisations had a slot to nominate women delegates. Hence, they ensured that there was a strong presence of women representatives at the National Constitutional Conference, organised at Bomas of Kenya, in Nairobi. We therefore, can boldly state that women’s gains at Bomas are because of the commitment of women in general, their ability to lobby and to negotiate, but above all, their clarity on what they wanted in the New Constitution.

Nzomo’s paper on *Women in Politics*, that highlighted the need for the 30 per cent critical mass, and National Conference in 1992, endorsement of the critical mass theory, women’s negotiations and legislative framework and the CKRC entrenchment of women’s views in the CKRC 2002 Draft had resulted in so many gains that those who were at Bomas had to guard and expand. Thus, at the National Constitutional Conference of 2003-2004, women organised themselves strategically and ensured a strong presence in all the critical committees; Committee on Representation, Legislature, Devolution, Bill of Rights, and Constitutional Commissions.

Women at the National Constitutional Conference

The women at the conference met every Tuesday and Thursday at the *Nyama Choma* Place at Bomas. They met to share what was happening in the various

committees, to educate themselves on some particular issues, for example, mixed member proportional representation, Devolution, Affirmative Action, among other issues. They met to map out their strategies at various committees and also to give feedback and share with other women. Some of the meetings were also organised by Women's Political Alliance, Women's Political Caucus, Federation of Women Lawyers (FIDA), and the Collaborative Centre for Gender and Development (CCGD), among others. The following extract on the debate on Affirmative Action shows how women lobbying at Bomas had influenced the delegates:

"Proposals for Affirmative Action prompted heated debate at the Constitutional Conference. KANU Chief whip Justin Muturi challenged religious leaders supporting Affirmative Action to introduce it in their own institution first. He said that he indeed supported Affirmative Action and also that Kenya was for Affirmative Action and urged even the Pope to start appointing women Bishops."³

This did not go well with the Kisumu Catholic Archbishop Zachaeus Okoth. He said that the statement made by the chief whip was not correct and that the Pope should be left out of the debate. The plenary reports of May 15th 2003 notes former cabinet Minister Maalim Mohammed (KANU) caused laughter when he recorded his support for Affirmative Action, "because I have a special relationship with women." Ms. Caroline Ruto, a Bomet District delegate, called for the creation of "women only" constituencies. The delegate said that this was more reliable in handling gender parity than the mixed member proportional systems proposed in the draft constitution. Mr. Charles Ohare from Vihiga suggested that Affirmative Action for women should be given a specific period while Mr. Kennedy Kiliku, Dock Workers Union secretary and a former Changanwe MP, asked delegates to ensure that the new constitution did not ignore women and workers, while South Mugirango MP, Omingo Magara, supported Affirmative Action but demanded that women compete for a selected number of seats. Voi MP Boniface Mganga said he also supported Affirmative Action through administrative policies and not through legislation:

"Women have already proved that they can achieve success, just as their male partners; what we need is to provide them with a level playing ground."
(*Committee of the whole house Verbatim Report, May, 15-2003*)

Women in the committees on the Bill of Rights, Representation of the People, Constitutional Commissions, Devolution, Culture, Land and Environment, among other committees, not only safe-guarded the women's gains in the CKRC draft but also expanded these gains. More on women's negotiations and achievements is discussed in Part III of this book.

³ CKRC Records

The draft constitution ensured recognition of the ethnic, cultural and religious diversity. It outlawed discrimination, made proposals on equality issues, conferred Affirmative Action for women's rights to participate in elective and appointive bodies, proposed one third as the minimum women's representation in all public bodies, equal rights to citizenship for women and men, protection of women in relation to motherhood, pregnancy, and equal rights in marriage, among other rights.

The women at the National Conference and their capacity to unite, to negotiate, to lobby, and to articulate the women's agenda are the reasons why the Bomas Draft was a very women friendly document. They fought the battle and won the fight. They stood on the line of duty and watered the seeds planted by others before them.

Women's efforts to safeguard their gains in 2004/2005

After the Bomas draft was taken to the battle field, which was parliament, women never gave up the struggle. They continued to lobby to safeguard the gains made. They had learned that even in the winking of an eyelid or taking a minute away from the battle field, they would turn around and find that the gains they had tirelessly worked for had all disappeared.

When the Bomas Draft was tabled in parliament, women were shocked to find that some of the provisions that were tabled for review were Affirmative Action for women's representations. It appeared that parliament had never accepted women's 30 per cent representation in the National Assembly, the Senate, district assemblies and the local authorities. In addition to these, it appeared that the same House had problems with devolution of powers to the regional and local governments, the presidential powers, and the establishment of the post of prime minister. There were two motions in parliament to remove Affirmative Action; one of was by Hon. Bonny Khalwale and the other by Hon. Raphael Wanjala.

Women parliamentarians and non-parliamentarians spent a lot of time lobbying for the two motions to be withdrawn. The chair of the Parliamentary Select Committee (PSC), Hon. Simeon Nyachae, had said that apart from the issues agreed upon by the PSC as contentious and negotiated at the old chamber and at Naivasha, the house would not open the rest of the document. But Hon. Khalwale and Hon. Wanjala would not hear of this. They had many supporters in parliament when it came to these issues. Others were interested in removing the district strategy for women's representation because they feared that a woman district representative would be too powerful for them to handle. The debate in parliament became a battlefield between the Government and the Opposition. Those of us who were at the Bomas Conference watched the debate on the draft constitution in parliament with dismay. The debate revisited

many of the issues agreed upon in Bomas including women's issues—in particular, Affirmative Action for women's representation.

As the battle raged in parliament, Affirmative Action became the bone of contention. It was Mutula Kilonzo (at the behest of Hon. Justin Muturi, who was at the time the chief whip of KANU), whom we had requested to save the women from the NARC members who were campaigning against Affirmative Action for Women.

Hon. Mutula Kilonzo took the debate head on and argued that Kenya African National Union (KANU) would support women, and that, Affirmative Action for women's representation should be upheld. Prof. Kivutha Kibwana was quick to see the route Hon. Mutula Kilonzo was talking and decided to support women to save NARC from embarrassment. It was Hon. Adelina Mwau, the tireless campaigner for women's rights who lobbied Kibwana to be in the house to do this.

Women had decided to work with KANU when they realised that NARC was not interested in supporting them while KANU was ready to show their support. On this, KANU could score against National Rainbow Coalition (NARC). This was strange because it was KANU that had rejected women nominees at the beginning of the process on the basis that they were elite women; that grassroots women were the right representatives.

Women formed the Women's Consensus Group that often met at Mrs Kamla Sikand's house. Kamla had been in the Women's Movement for more than forty years. She had seen a number of the National Council of Women of Kenya, Kenya Professional and Business Women Club, and Women's Political Alliance, among other women's organisations. Her house became a home for young women who met regularly; sometimes to strategise, other times to cry over each other's shoulders or to share anxieties as they waited for decisions to be made by institutions where they could not be present, for example, parliament, or meetings of major political parties. When parliament was debating the Bomas draft in Kilifi, when they were discussing it in parliament and even when the Naivasha negotiations were going on, the Women's Consensus Group congregated at Kamla Sikand's house.

The Women's Consensus Group lobbied a lot to maintain women's gains as parliament started amending the Bomas draft. Women parliamentarians, including Hons. Martha Karua, Betty Tett, Beth Mugo, Adelina Mwau, Cecily Mbarire, among others, tried their best to have members of parliament withdraw the two motions tabled by Hons. Bonny Khalwale and Raphael Wanjala, to remove Affirmative Action for women from the draft. They had even talked to the KANU whip, Justin Muturi, to bring a counter motion so that those who wanted to remove the Affirmative Action for women's representation in parliament and local government would be defeated.

As stated earlier, Hon. Kivutha Kibwana had decided to make it his responsibility to defend the Affirmative Action principle. There were others, like the chair of the parliamentary committee, Hon. Simeon Nyachae, who felt that the issue of a third women's representation had been there for too long and needed to be passed by parliament. Hons. Paul Muite and Kipkalia Kones, also joined Hon. Kivutha Kibwana in supporting the women's agenda.

As parliament debated the provisions that they needed to be amended, high on the agenda being Affirmative Action for women's representation in elective bodies, women were once again in great pain. It was a period of deep anxiety as exemplified by the following text messages that express the desperation women as the debate was going on in parliament:

"We can't work for so many years and lose the one-third at this stage," argued Lucy Githaiga

"All the women in this country have spoken, they want one third women's representation by whatever route," said Daisy Amdany.

"Kibwana, please help the women get our one-third in article 123 on membership of parliament," pleaded the women during the famous midnight session of parliament.

"It has been a long road. Lucy (Lucy Githaiga) we still have to keep vigil. We have to ensure that one-third is not edited out. We have to ensure there are no loopholes used. We have to monitor every moment," said Kamla.

"Betty Tett, let us ensure we entrench one-third even if we deal with modalities later," Elachi.

"Adelina, please get every one to support the districts," Wambui Kanyi.

"Kiraitu, please get them to support the district" Wanjiku.

"Muite, how are we getting on? Should the women take the option that is being proposed i.e. one-third at article 123 and legislation to provide for modalities?" Wanjiku Kabira.

"Muite, women are outside. The police have stopped them from coming in. Can you do something about it?"

Adelina, "Charity, women are outside. The police have refused to allow them in. Please ensure we get the one-third in article 123 under legislation. It is the fallback position if we don't get the district. Talk to Nyachae and Muite. We have discussed."

As we sat at Sikand's house that night when the revised draft was being debated in parliament, I had this conversation with Hon. Paul Muite through mobile text messages:

Muite: What did you say?

Wanjiku: I am in labour?

Muite: In what?

Wanjiku: In labour?

Muite: Where are you?

Wanjiku: In Kamla's house.

Muite: Why aren't you in hospital?

Wanjiku: Because I am waiting for you and those with you to help me deliver.

Muite: I am in parliament. Where is your husband, or neighbours?

Wanjiku: My husband or neighbours can't help me; you and those with you can, you are the midwives.

Muite: You have lost me.

Wanjiku: We were never together.

Muite: What are you saying? I do not understand? I also thought you had stopped giving birth? What are you saying?

Wanjiku: It's okay, you cannot understand, you have never been in labour?

Muite: I have seen women in labour, my wife has also been in labour, not once, three times, so I know.

Wanjiku: No you don't, Edith, your wife knows. You have never been a woman; you can never be in labour.

Muite: You have lost me again.

Wanjiku: No, I have not lost you; we have never been together. Have you voted for the Affirmative Action clause? What have women produced? A live baby or still born?

Muite: What do you mean?

Wanjiku: Affirmative Action? A live baby or still born?

Muite: Oh! That is what you are talking about!

Wanjiku: What did you think I was talking about?

Muite: Just relax, Hon. Nyachae has decided it will not be debated again. He is tired of this Affirmative Action issue being debated always. It remains.

Wanjiku: Nyachae is a great midwife.

Although we lost the 74 district representations that we had negotiated for at Bomas, we retained the provisions ensuring women's 30 per cent quota in parliament and local authorities. That principle, in regard to the National Assembly, would later be removed by the Parliamentary Select Committee

(PSC) in Naivasha during the 2010 draft negotiations and retain the forty-seven county seats instead. The struggle continues.

The 2005 referendum

During the campaign for the 2005 Referendum, Kenya's politics went wild. The arguments on why one should vote 'Yes' or 'No' for the Draft Constitution became political arguments. Stories are told of how, even what was not contentious at Bomas became contentious during the referendum. Women's access to property became an issue. It was alleged that those provisions were put in the draft by some ethnic communities who wanted to marry girls from communities that had no land so that they could get land for themselves. Reproductive rights of women became "rights for women to become immoral." The right to marry or not to marry became "lesbianism" or "gaysim". It is no wonder individuals in many of our communities wanted their leaders to stop *maneno mengi*, (too much talk, or a lot of noise) and just tell them whether they should say 'YES' or 'NO' to the draft Constitution presented before them.

A story is told about a gentleman in North Eastern Kenya who told the civic education provider before starting the meeting that his answer was 'NO'. The provider asked him whether he had read the proposed constitution to which he answered, "No, but if you want me to, I have a son who can read it for me and then I will say No." We have heard many stories about people in Nyanza Province who said, "Raila has read and said 'No'. So I don't need to read it." Even after we took the people through the draft constitution, during the many civic education sessions we had in many parts of the country, they still asked us, "What do you think we should do? Should we say 'Yes' or 'No'?"

That is the story of the 2005 referendum. More will be said later about this referendum but here it suffices to say that it was about politics, ethnicity and power struggle. It was about political negotiations and betrayals between the then dominant political parties in parliament and boardroom agreements that Kenyans had no role in negotiating. Women, being part of Kenya's ethnic groups, lost their gains in the 2005 draft constitution that was defeated in the referendum, as did all other Kenyans.

The multi-sectoral forum – 2006

Year 2006 saw the Ministry for Justice and Constitutional Affairs under the leadership of Hon. Martha Karua restart the process of the review of the constitution. A Multi-Sectoral Forum was established. Women took their place in the forum after another battle where various stakeholders outside the Women's Movement wanted to be the ones to nominate women representatives. Hon. Karua stood her ground and said that women would

nominate their own; that history had shown that when women elect their own, it worked.

The forum was co-convened by Hon. Dalmas Otieno and Hon. Njeru Kathangu. The political parties, faith based groups and civil society organisations had been requested to bring in at least 30 per cent women representatives. It did not happen. Women again consulted and I was requested to write to Hon. Karua about this and I did. Her response was quick and decisive: the Multi-Sectoral Forum was to be expanded to ensure at least 30 per cent women's representation. The forum did not have a problem with this but they wanted to bring women from various groups. Hon. Karua would not hear of it and reminded them that when they were requested to bring in 30 per cent women's representatives, they did not find them and so, women's organisations that did not have a problem finding them would identify them and bring them to the forum.

As always, and wanting to make sure we had the right women and that we followed due process, women organised a selection committee chaired by the Women's Political Caucus and Women's Political Alliance. We advertised through women's organisations, the same way we had organised for identification of commissioners to the review process. We received CVs from various women's organisations, short-listed, went through the whole process of identification and produced the list for the forum.

Those identified for the forum were:

- Maimuna Mwidau – League of Muslim Women;
- Wambui Kanyi – Collaborative Centre for Gender and Development (CCGD);
- Daisy Amdany – Women's Political Alliance;
- Atsango Chesoni – Federation of Women Lawyers (FIDA);
- Rosemary Okumu – Women's Political Caucus.

Akinyi Nzioki from the Women's Political Caucus and myself coordinated the process. The women identified joined the rest of the Multi-Sectoral Forum members and continued with the struggle. The Multi-Sectoral Forum – 2006 process did not go very far and was soon abandoned.

The famous 50 Seats Bill

Various efforts for minimum reforms to bring in women's representatives did not mature. One of those efforts was an initiative from the Ministry for Justice and Constitutional Affairs to review constituency boundaries. Women took the cue and revisited the principle of Affirmative Action. It has been a long struggle by the women of this country towards putting in place legal institutional frameworks, addressing marginalisation and promoting equitable development. International evidence has shown that the only way to

significantly increase women's representation in Parliament and other key leadership positions is to use positive action measures such as the party list. In Sub-Saharan Africa, Positive Action has seen increased number of women in countries such as Rwanda – 48.8 per cent, South Africa and Mozambique 30 per cent; Tanzania – which brings women in through political parties; Uganda – through special seats, and Ethiopia 29 per cent, through quota system by the ruling party.

In 2007, the Minister for Justice and Constitutional Affairs, Hon. Martha Karua, published a Bill to amend the constitution to allow for the increase of constituencies. The time for review of the constituency boundaries as expected by the constitution was due. From the information women received, President Kibaki himself had suggested that the bill also takes into account the importance of bringing in Affirmative Action for women's representation. He argued, we were told, that if the country were to increase constituencies, it made sense to address the never ending quest for the Affirmative Action for women in parliament. This was not difficult to believe given the fact that in 2006, the President had issued a directive requesting that in all new appointments, for example, in the recruitment and promotions in the public service, the principle of 30 per cent women's representation be addressed.

Women gathered together once again. They ignored the divisive issues that had been brought by the 2005 referendum discussed later in Chapter seven of this book. Ten organisations brought women together coordinated through the Women's Political Alliance and Women's Political Caucus. The others were the Education Centre for Women and Democracy; the League of Kenya Women Voters; Collaborative Centre for Gender and Development; National Council of Women of Kenya; Maendeleo ya Wanawake; and Muslim Consultative Sisters Network. They formed a National Steering Committee whose responsibility was to steer and coordinate support and lobby for the Bill to amend the Constitution to allow for creation of 50 special seats for women's representation in parliament. They also developed materials and facts sheets to lobby parliamentarians.

Noting that the African Union had already passed a quota for women's representation at 50 per cent, women argued that from 1963 when Kenya achieved independence to 2007, women had been struggling to be represented in parliament; that countries were required to do all they could to achieve this 50 per cent and that the East African parliament had also passed a 30 per cent quota which Tanzania and Uganda had already implemented; that the Intergovernmental Authority on Development (IGAD) of which Kenya was a member had also a policy of 30 per cent women's representation and a target of 50 per cent by 2015.

Women then revived the Women's Negotiating Team so that they could lobby at the highest levels. Members of this team were:

- Dr. Eddah Gachukia – Co-Chair and former nominated MP, former director of FAWE, and former Chair of FEMNET;
- Mrs Ida Odinga – Co-Chair, then Chair of The League of Kenya Women Voters;
- Hon. Phoebe Asiyo – Then Chair of Women’s Political Caucus former Chair of Maendeleo and former MP;
- Hon. Zipporah Kittony– Former Chair of Maendeleo ya Wanawake Organisation and former Nominated MP;
- Hon. Julia Ojiambo – Former Assistant Minister for Culture Social Services and Chair of the Labour Party of Kenya;
- Prof. Wanjiku M. Kabira – Convener, Chair of Women’s Political Alliance, Professor of Literature, University of Nairobi;
- Dr. Betty Gikonyo – A Paediatrician based in Nairobi;
- Mrs Kamla Sikand – Women’s Political Alliance Kenya;
- Ms Rukia Subow – Chair, Maendeleo ya Wanawake;
- Mrs Rahab Muiya – Vice-Chair, Maendeleo ya Wanawake;

The women were supported by technical experts including:

- Mrs Irene Oloo – League of Kenya Women Voters;
- Mrs Deborah Okumu– Women’s Political Caucus;
- Ms Ayoo Odicoh – Collaborative Centre for Gender and Development;
- Mrs Wambui Kanyi – Collaborative Centre for Gender and Development;
- Ms Daisy Amdany – Women’s Political Alliance, Kenya;
- Ms Praxides Nekesa – Collaborative Centre for Gender and Development (CCGD);
- Ms Fatuma Ibrahim – Kenya Human Rights Commission;
- Ms Jesang Hutchinson – Education Centre for Women in Democracy (ECWD)

The role of the Women’s Negotiation Team was to open the doors for women and negotiate with the top leadership of political parties and members of parliament, among other things. The technical committee was to coordinate activities, prepare technical papers, and mobilise women to support the Bill.

Women’s march for the 50 seats

The mobilisation for support of the 50 seats saw women again united as they had been during the negotiations of the constitutional conference at Bomas. It saw the organizing of one of the biggest women meetings in Nairobi with more than 2,000 women from all over the country coming to the Kenyatta

International Conference Centre (KICC) and taking over Nairobi for the day through their march from Parliament Road, Haille Selassie Avenue, Moi Avenue, Kenyatta Avenue and through City Hall Way to Parliament. Before this day, women had held road shows through Nairobi starting from the Kamukunji Grounds – the traditional place for those who fight for democracy – through Eastleigh, Kariobangi, Parklands, Kangemi, Kawangware and ending up at Kibera Chief’s camp – the second home of Agwambo (Raila Odinga) – where Mrs Ida Odinga addressed the crowd. All the way, women were cheered along by an enthusiastic crowds.

Women’s one million signatures for 50 seats

Before the start of the March to Parliament, Road Show, women had launched the ‘One Million Signature Lobby’ at Kamukunji. Among those who launched the ‘One Million Signature Lobby’ for support of the Bill were:-

- Mrs Ida Odinga – Co-Chair
- Dr. Eddah Gachukia – Chair
- Hon. Martha Karua
- Hon. Charity Ngilu
- Hon. Phoebe Asiyo
- Hon. Zipporah Kittony
- Prof. Wanjiku Kabira – Convenor
- Mrs Anne Njogu.

Women petition parliament

Within a week, women had collected close to 700,000 signatures and 42,000 petitions from all the 210 constituencies.

On the day of debate on the 50 seats Bill, Prof. Jackline Oduor, Ms Joyce Majiwa and myself, presented the 700,000 signatures and the 42,000 petitions to the then clerk of the National Assembly, Mr. Samuel Ndindiri. While receiving the petitions, Mr Ndindiri noted that, that was a significant day for Kenya because it was the first time in the history of the country’s parliament that petitions had been taken to Parliament by the public. He also noted that this was the trend where parliaments across the globe were encouraging in order to ensure greater participation of the public in the decisions that affect them. He said that he was very proud of Kenyan women for being the first to initiate that process and added that even if parliament did not pass the Bill, the women of Kenya would go down in the history of the country’s parliamentary process as having brought the petition to parliament. Mr. Ndindiri assured women that those petitions were to be deposited in the parliamentary library and that women could get a member of parliament to present them when parliament opened. Mr. Ndindiri would later succumb to illness and died on April 3rd 2008.

On the day of the debate, members of parliament boycotted the debate session. Considering that the quorum was 65 per cent since it was a constitutional amendment, the debate never took off for lack of quorum. Like other motions on Affirmative Action presented before parliament, it aborted.

Kenyans should be able to find these petitions in the parliamentary library. One day, an MP might table them; if not for anything else, to express the women displeasure at the contempt with which the 6th, 7th, 8th, 9th parliaments treated the women's efforts towards Affirmative Action.

The 2010 harmonised draft and the referendum

The Constitutional Amendment Law 2008 established a committee of experts to look at the CKRC 2002; Bomas Draft 2004; and the Referendum Draft 2005 to identify and build consensus on the contentious issues. Women started their journey again.

Women's organisations identified the contentious issues, negotiated for a consensus amongst themselves and presented their recommendations to the Committee of Experts. The Caucus for Women Leadership (the former Women's Political Caucus); Federation of Women Lawyers of Kenya; Women's Political Alliance Kenya; G10 Group, and Maendeleo ya Wanawake, among others, came together to strategise. They reconfirmed that devolution of power, the executive chapter; representations and transitional provisions were the major contested chapters. In addition, Kadhis courts and the issue of when life begins were contested by some Christian Churches in the 2009/2010 constitutional debates.

On the whole, women were happy that women's gains in the Harmonised Draft and their proposals in the Bomas and in the 2005 Referendum Drafts had been left intact. This was until it was the turn for the Parliamentary Select Committee (PSC) to look at the Harmonised Draft. Women could not believe it when the PSC decided to remove the 30 per cent women's representation in parliament and instead just have a representative from each of the 47 counties. But then they remembered it was the same parliament that had twice defeated the Affirmative Action motion in parliament and the third time it had passed the buck to the Constitutional Commission to see what they could do. What was most painful for the women's organisations was that the PSC on the constitution sacrificed women's provisions on the altar of political parties' interests. This was called "The bigger picture"—that of equity in representation that saw PSC increase the number of constituencies from 210 to 290. The committee did not even consider other methods of increasing representation such as proportional representation or the twinning system so that they could deal with equity of representation and ensure consideration for women's interests. Women lobbied, prayed, organised, did everything but PSC would not

hear their cry. When I called Mrs Deborah Okumu of the Caucus for Women Leadership, she said, *“Please Wanjiku, I do not want to talk. I am nursing the pain in my heart, my mind and my soul, my whole body. So, I do not want to hear about Naivasha.”* I said to her, *“Debora, I too have not gotten over the pain of what has happened.”* *“So what do we do?”* asked Debora. *“I have no idea, Debora; all Kenyan women are nursing their pain.”*

On March, 15th 2010, Okumu contacted me and we had a long discussion on consolidating the gains we had in the then “New Harmonised Draft”. We talked about the 30 per cent in the senate, the 30 per cent in parliament, the 30 per cent in county government and many other gains that we had been safeguarding since the CKRC Draft of 2002. We agreed to move on. It was not, after all, for nothing that we had struggled. We had to water the seeds that had sprouted and prepare the land to plant more. We had to also ensure that those that had sprouted were watered regularly, pruned and tendered until they could stand on their own and bear fruit. We appreciated the fact that the Committee of Experts, where women were ably represented by Ms Atsango Chesoni, who had been in the process all along, and Hon. Njoki Ndung’u, ensured that women’s gains were protected, we regretted that the PSC had watered down the gains but we would move ahead and support the referendum. We adopted the attitude that we shall consider the glass half-full and move on.

Women leaders brought 1000 women to Bomas in April 2010 to again review their gains and take a position on the 2010 referendum. Women agreed that we had every reason to take the battle to the referendum and ensure a YES vote that would pass the new Constitution. But we must not forget that there were men also who supported the women. Voices of men like Ndindiri, and others I have mentioned before such as Oki Ooko Ombaka, James Orengo, Kiraitu Murungi, Mukhisa Kituyi, Paul Muite, Raila Odinga, John Michuki, Hon. Mwai Kibaki, are like a drop in the ocean. Majority of male politicians have been either lukewarm or hostile to the women’s agenda.

It was surprising that the Christian Church whose faces of “NO”, that is, against the passing of the new Constitution, were the Catholic Bishop Cardinal John Njue; Reverend Peter Karanja, the National Council of Churches of Kenya (NCCCK) Secretary General joined hands with many Evangelical Groups; the former president of Kenya, Mr. Daniel Arap Moi, and the Hon. William Ruto. They led the “NO” campaign. It was difficult to see what brought these men of the cloth and the these politicians together. Evidently, for some of these politicians, it was the land question. For the Churches, it was initially abortion and the Kadhi Courts clauses before the list expanded to include counties, citizenship of children of eight years, among other issues. Though women had expected more gains in the new Constitution, the success of the “YES” vote in the referendum ushered in the “Second Republic” with women at the centre of the new constitutional dispensation. It therefore brought to us women *a season*

of harvest. We know that the *River of Resistance* will continue to flow, increase its momentum and gather more people on its way to the sea. In the meantime, we shall nurture the gains as we continue the struggle.

Summary

This chapter has traced the path women have travelled on their journey towards a new constitutional dispensation. The next chapter discusses voices of women in the rural and urban centres who provided the mortar for the struggle for a new constitutional dispensation.

Pictorial I

1. Historical



Priscilla Ombonya, the first Kenya African woman to sit in the Legislative Council in 1961.



Muthoni Likimani: State of Emergency detainee.



Margaret Kenyatta, the first woman mayor of Nairobi.



Sarah Wambui, Chair of Nyakinyua Women's Group and Esther Njeri Mugunyi both former freedom fighters.



Wambui Otieno, the freedom fighter.



Field Marshal Muthoni, the second in command to Dedan Kimathi after General Mathenge left the leadership of Mau Mau.



Maendeleo House, built by Kenyan women under the leadership of Jane Kiano.



Jane Kiano, former Maendeleo ya Wanawake Chair who spearheaded the building of Maendeleo House and current patron.



Jael Mbogo, former Chair of Maendeleo ya Wanawake and negotiator at Safari Park process.



Phoebe Asiyo, former Chair of Maendeleo ya Wanawake, a longstanding MP for Rachuonyo and leader in the struggle for the new constitution.



Sarah Sarai Thara Njomo, Founder of the National African Women's League.



Dr. Eddah Gachukia, who chaired the NGO UN Women Conference 1985. With her is Njoki Wainana, Executive Director FEMNET.



Wangari Mathaai, National Council Chair and head of Green Belt Movement. She was internationally recognised for her persistent struggle for democracy, human rights and environmental conservation. In 2004, she became the first African woman to receive a Nobel Peace Prize. She passed on in September 2011.



Sarah Wanjohi, Programme Officer DANIDA who supported initial activities for women's negotiations with political parties.



Wanjiku Mbugua, Programme Officer FES, who supported initial activities for women's negotiations with political parties.



Lilian Mwaura, Chair of National Council; Njoki Wainana, Director FEMNET, who co-convened first National Women's Conference at KICC, 1992. With them is the Author.



Maria Nzomo (AAWORD) – who set the agenda for Affirmative Action for women in politics in a paper in 1991 – with Nancy Baraza, a former CKRC commissioner and Deputy Chief Justice from 2011.



Hon. Julia Ojiambo, Dr. Ruth Kibiti, Jacinta Makokha and Jael Mbogo at a strategy meeting on constitutional review, June 1998.

2. Affirmative action



Phoebe Asiyo, making a case for Affirmative Action for women at a workshop in Nairobi..



Beth Mugo. She presented the second motion on Affirmative Action, 2000.



Hon. Raila Odinga. He seconded Affirmative Action motion in 2000.



Hon. Kiraitu Murungi. He seconded Phoebe Asiyo's motion in 1997.



Hon. John Michuki. He supported Affirmative Action motion, 1997.



Hon. James Orengo. He supported Affirmative Action, 1997.



Charity Ngilu, opening an Affirmative Action meeting at Machakos Garden Hotel, 1999.



Wambui Kanyi, member of the Affirmative Action Committee and technical expert, 1997-2000.



Ayoo Odiko, a member of the Affirmative Action Committee and technical expert, 1997-2000.



Beatrice Kizi, member of the Affirmative Action Committee and technical expert, 1997-2000.



Catherine Nyamato, nominated MP, supporting the motion on Affirmative Action in Parliament in 1997.



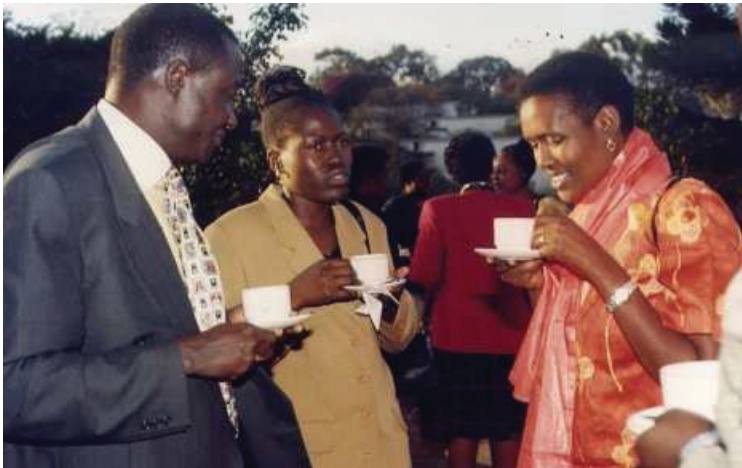
Cecily Mbarire, Ayoo Odiko, Mrs Joyce Kaneohe and Fatuma Ibrahim at Affirmative Action in Nairobi 1998.



Bishop Ndinge Mwana-Nzeki and Paul Muite officially opening a meeting on Affirmative Action, 1999.



Phoebe Asiyo, presenting on Affirmative Action at a meeting at Silver Springs Hotel, 1999. With her is Hon. Rose Waruhiu and the Author.



Winnie Byaminya, MP in Uganda at an Affirmative Action consultation meeting in Nairobi, 1998.



Philo Ikonya, addressing an Affirmative Action meeting in 1998.



Hope Mwesigye (2nd from left), Minister of State in the Ugandan Government with women leaders on Affirmative Action in 1998.



Women leaders at a strategy meeting on constitutional review process, 1998.



Martha Karua, Martha Koome, Beth Mugo, Kamla Sikand (contributing), at a Press Conference on second Affirmative Action meeting at Milimani Hotel in Nairobi, 1999.



Martha Koome, Martha Karua, Charity Ngilu, Nancy Baraza and the Author, consulting on Affirmative Action strategy, 2000.

3. Negotiating for space



Jane Ogot, Kenya Women's Political Caucus coordinator, and Akinyi Nzioki in attendance at Safari Park negotiations, 1998.



Adelina Mwaui, presenting at 1st Bomas Conference, 1998.



Rose Waruhiu, at Safari Park negotiations, 1999.



Bishop Ndinge Mwana-Nzeki, officially opening a meeting on Affirmative Action, 1997.



Julia Ojiambo, the Author and Jackline Oduor in consultations at Safari Park Hotel, 1998.



Jael Mbogo, the Author, and Prof. Okoth Ogendero at Silver Spring Hotel Nairobi, consulting on the constitution, 1998.



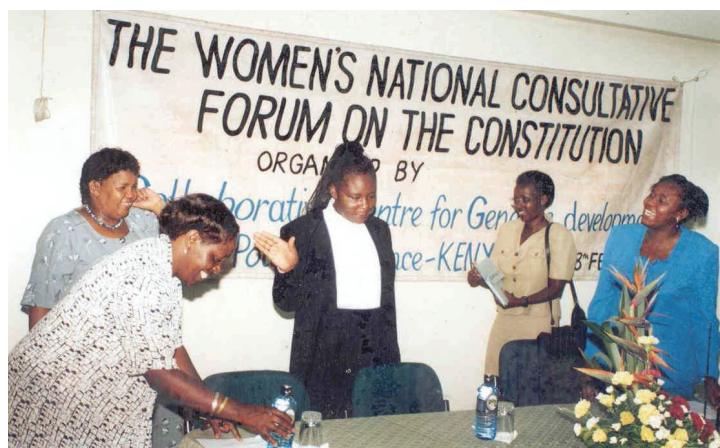
Samuel Kivuitu, Chair of ECK, Amos Wako, AG, Commissioners Nancy Baraza, Prof. Okoth Ogendero and the Author. Amos Wako called the 1st Bomas and Safari Park negotiations for legislative framework for constitution review, 1998-1999.



Author, contributing to the debate on legislative framework at Safari Park Hotel, 1999.



Consultations at Safari Park, 1998.



Women at a National Consultative meeting, 1998.



Beth Mugo, Martha Koome, Martha Karua and Kamla Sikand at a strategy meeting at Silver Springs 1998.



Women leaders: Joyce Obima, Martha Karua, Martha Koome and Jean Kamau at negotiations talks in Safari Park, 1998.



Prof. Maria Nzomo, Rose Waruhiu, Zipporah Kittony and other women at Safari Park negotiations, 1998.



Zipporah Kittony, KANU nominated MP. She supported Caucus nominations in Parliament against her KANU party, 1999.



Hon. Mwai Kibaki, Chair of DP, with members of the National Women's Negotiating Team: Hon. Phoebe Asiyo and Hon. Martha Karua after consultations at Parliament building, 1999.



Charity Ngilu, Martha Karua, Beth Mugo and Betty Tett lead women in the march in Nairobi in support of Martha Karua's Bill to amend the constitution and have an extra 50 seats for women, 2006.



Aida Odinga, Co-Chair of the National Women Negotiating Team, addresses political party leaders on Constitution Amendment Bill, 2006.



Nyambura Githagui, Prof. Shanyisa Khasian and the Author, consult with Hon. Chris Okemo.



George Saitoti, KANU Vice Chair. He was consulted by women on stalled review process, 1999.



Uhuru Kenyatta. He was consulted by Abida Ali, the author and Nancy Baraza – of the Ufungamano Initiative – on nomination of commissioners, 1999.



Gitobu Imanyara. He was consulted by Abida Ali, author and Nancy Baraza – of the Ufungamano Initiative – on nomination of commissioners, 1999.



Raila Odinga. He was consulted by women on stalled process, 1999.



William Ruto. He was consulted by Abida Ali, author and Nancy Baraza – of the Ufungamano Initiative – on nomination of commissioners, 1999.

4. CKRC



Oki Ooko Ombaka, Chair of People's Commission (1999-2000) and Vice Chair of CKRC (2000-2002) with the Author.



The Author, Joyce Umbina and Prof. Yash Pal Ghai.



Abida Ali Aroni, Vice Chair CKRC, with Musonik araap Korir and the Author, at CKRC meeting in Mombasa, 2002.



Abida Ali Aroni, Keriako Tobiko and Riunga Rainji.



Judy Thongori, Akinyi Nzioki and Hon. Martha Karua, at a CKRC workshop, 2001.



Commissioners: Pastor Ayonga, Mutakha Kangu, Nancy Baraza and the Author at a CKRC workshop in Mombasa, 2002.



Hon. John Keen, Commissioners Ibrahim Lethome and the Author, at a CKRC Commissioners workshop in Mombasa, 2002.



Some of the CKRC Commissioners, 2004.



Women's Voices from the Provinces

Introduction

In this chapter, I share with you some of the most memorable moments that I witnessed during the collection of the views, memorable because of the depth of reflection of the women of all walks of life, women of different ethnic and socio-economic backgrounds who spoke in one voice as if they had a national meeting where they agreed on what to say.

The voices of women from the former eight provinces, now 47 counties (*see maps 1&2*) indicate that we are one nation though diverse in culture, tradition and resources. A nation where each of us is reclaiming their space in this nation. The following pages focus on the views of women who for a long time have lived in the shadows.

One of the reasons the knowledge and experiences of women remain outside public knowledge and policy formulation is that this has not been documented. It is not because women have not spoken. It is because our institutions and our world view, have been the prerogative of male scholars and male policy makers. More often than not, the institutions that are responsible for knowledge development and dissemination as well as policy formulation have not considered women's knowledge, views, perspectives and interests.

This Part of the book presents views of women from various provinces (now 47 counties) for documentation. We are a people with very short memories and we could easily forget that women played a key role in shaping the new constitution and subsequently, in the launching of the Second Republic.

The CKRC Constitutional Review Act (Kenya Review Act, 1999) that guided the process from 1999 aimed at:

- a) Guaranteeing peace, national unity and integrity of the Republic of Kenya in order to safeguard the well being of the people of Kenya.
- b) Establishing a free and democratic system of government that enshrines good governance, constitutionalism, and the rule of law, human rights and gender equity.

- c) Recognizing and demarcating divisions of responsibility among the various state organs including the Executive, the Legislature and the Judiciary so as to create checks and balances between them and to ensure accountability of the Government and its officers to the people of Kenya.
- d) Promoting people's participation in the governance of the country through democratic, free and fair elections, and the devolution and exercise of power.
- e) Respecting ethnic and regional diversity and communal rights including the right of communities to organise and participate in cultural activities and the expression of their identities.
- f) Ensuring the provision of basic needs of all Kenyans through the establishment of an equitable framework for economic growth and equitable access to national resources.
- g) Promoting and facilitating regional and international cooperation to ensure economic development, peace and stability and to support democracy and human rights.
- h) Strengthening national integration and unity.
- i) Creating conditions conducive to a free exchange of ideas.
- j) Ensuring full participation of people in the management of public affairs, and
- k) Enabling Kenyans to resolve national issues on the basis of consensus.

Clearly, the Review Act mapped out in details what the process intended to do and though it took another ten years to come up with a new constitution, it was worth the journey.

How the chapter is organised

This chapter is divided into eight sub-sections covering the eight provinces (now 47 counties). Some of the information in the chapter is based on verbatim records of women presentations during the collection of views between 2001/2002 by the CKRC. I have identified women from various parts of the country who participated in constituency hearings. These verbatim records were documented by the Constitution of Kenya Review Commission (CKRC) and I had access to them. In the chapter, I have also used my own notes in cases where I was not able to access verbatim records and transcribed reports or in instances where such reports were not available.

Full transcription and processing of the verbatim records was not completed by the time the commission wound up in December 2005 after the referendum as stipulated by the CKRC law. In addition, the commission's summary reports were not sex-disaggregated. But before the commission wound up, a project

titled, "Voices of the People" managed by a committee that I chaired had started the process of analysing data by region, gender, age and social economic status. Unfortunately, it did not complete its work. However, preliminary data showed that more than 17,000 presentations on Affirmative Action for women were made by Kenyans to the commission. Some of these were group presentations from organisations such as Maendeleo ya Wanawake, which had a membership of more than four million, and many other national organisations. One can, therefore, say that more than 3 million women gave their views on critical issues such as land, Affirmative Action for women's representation, gender based violence, basic needs of water, health, education, security, family and on other issues.

Other voices from women are based on summaries that I personally recorded as I visited various constituencies. In other cases, the commissioners in the CKRC organised special hearings for "women only" sessions in order to give women an opportunity to present their views without any hindrance. Using those sources, I have tried to reflect the voices from all provinces (now counties) and from many communities. I have also used some presentations that were made to the commission by women's organisations. In some cases, I have used male voices to ensure a clear context of women's voices.

Civic Education had been carried out before the commission went out to collect people's views. In this regard, we give credit to many women's organisations that clearly focused on mobilizing women to debate their issues and prepare memoranda for presentation at the hearings. Many national women's organisations and community based organisations also mobilised women to participate. In many cases, we would find presentations by women groups or individuals speaking on behalf of the organisations.

A look at the Commission's Report of 2002 and CKRC Draft 2002 shows that women of Kenya participated fully in the presentation of the views at the constituency level. The commission had created, as the law required, constituency forums to facilitate collection of views. It had also established Constituency Constitutional Committees of about nine people. In some cases, they were more but they had to have one third women's representation. These committees were the lowest levels of consultation and it was their responsibility to ensure participation of all constituency residents, mobilise for civic education and all logistics necessary for collection of views and civic education. They were coordinated by the District Coordinator who was an employee of the commission. The District Coordinators themselves were trained in the processes necessary for full participation of people at all levels and across the board, for example, social economic status, men and women, youth, trade unions and so on. The presentations and discussions on women's voices in this chapter were, therefore, a result of this process. It was an intense, indeed people driven exercise. The process ensured that the poor, among them

women, youth, the minority communities, retired civil servants, religious organisations, trade unions, political parties, farmers, pastoralists—all categories, gave their views on the kind of constitution they wanted.

It should be noted that although the 2nd referendum took place in 2010, no such comprehensive consultations as that of 2001/2002 by CKRC took place again. The Committee of Experts was only dealing with the contentious issues but the rest of the draft, its spirit and soul, retained the people's views as collected by the CKRC. Therefore, the 2010 constitution that ushered in the Second Republic was the most consultative, most comprehensive, most accommodative and most negotiated process in recent years. Men, women, youth, ethnic groups, elders, trade unions, farmers, pastoralists, fishermen, peasants, minorities, among other categories, gave their views.

How women spoke during the public hearings

At “women's only” session, women spoke freely about gender based violence, their vulnerability, and their desire to have their rights upheld among other issues that affect them. This was the case at a sitting I had at Bura (Garissa), where Muslim women were able to express their concerns on problems at the domestic level. Similarly at a meeting of young women from Nyanza, Ndhiwa constituency. There was also another “women only” session from *Bomet in the Rift Valley Province* where women spoke their hearts out. There was yet another at Kapenguria, also in the Rift Valley.

On many occasions, it was not unlikely for us to hear more than twenty men speak before a woman could get courage and volunteer to speak and give her views. Very often, unless one asked them to speak, women who had not gone through civic education would sit there looking mesmerised, impressed by how knowledgeable men were. When men spoke, they spoke with authority and with confidence. Often, particularly in public hearings, women were slow in expressing their views with confidence. Luckily, many women and women's organisations had worked closely with others at the grassroot levels. Women's groups and organisations had memoranda. Sometimes, women as individuals told their story with confidence. They would apologise for not knowing whether what they were saying was important and often had to be assured that whatever they said was alright. Their behaviour was understandable because women had not before been given opportunities to express themselves in political processes such as this one of negotiating a new constitutional dispensation. But when women sat separately from the men, their expressions changed. Their kindred spirit emerged, they laughed at themselves, at men and at culture. They would laugh and encourage each other to speak. One woman would start a story and another one would pick it up and the third woman would also add her story and they would create one story

instantly. It was, therefore, heart rendering how women told one story as if they had rehearsed.

Thus, one woman would begin and when she slowed down, another would interrupt and say “what she is saying is this, women ...” Yet another would pick the same story and continue. Strange enough, I could continue with the same story too. Women are as such one in their experience of oppression and in the struggle to overcome the same. It is not unusual to see women feeling powerless, doubtful about themselves, giving up their creative lives, uncertain, faltering when they are speaking in the presence of men. Very often, we had sentences such as:

I think, I would like to say this.....

May be, I will be able to do.....

Probably, I shall manage to

Where men will say;

I want to go now.....

I am going to do.....

I shall not be back before.....

Men often speak with a sense of finality.

One can of course argue that women leave space for negotiations but more often than not, it is a demonstration of lack of confidence. Women have lived in a world where the source of public knowledge about them has been men. That is why men spoke on behalf of the women present, claiming that elite women from the urban areas had no idea what the needs of rural women were. The church leadership in 2010 referendum debate also made it their business to speak on behalf of women. They used abortion as the red card to reject the draft constitution. Their discussions often gave the impression that if abortion was legalised, women would be queuing to procure abortion. They did not find it necessary to consult women: “No, they knew women were their mothers and wives!!” Men have articulated women’s needs for centuries. They have been the source of public knowledge about the world and about women all along.

The wonderful feeling about the constitutional review process in Kenya was that women spoke first for themselves and secondly, for the nation. They articulated issues with unparalleled clarity and ensured those issues were included in the constitution. There was no faltering on matters concerning women. Women were clear and to the point. Although the presentations in this chapter are samples from some constituencies, they represent the voice of women in this country. They spoke like they had agreed on what to say while they were *emerging from the shadows* and defining and naming the world for themselves.



Map 1: Administrative map of Kenya (before the new constitution) showing the 8 (eight) provinces mentioned in the text. Adopted from Data Exchange Platform for The Horn of Africa (DEPHA) www.depha.org

a). List of Provinces: Central Province, Coast Province, Eastern Province, Nairobi, North Eastern Province, Nyanza Province, Rift Valley Province, Western Province and Nairobi Province which was/is the Capital City, a District and a Municipality at the same time.

b). List of Parliamentary Constituencies in Kenya's eight provinces in year 2010:

1. Nairobi Province

Nairobi District:

Dagoretti
Embakasi
Kamukunji
Kasarani
Langata
Makadara
Starehe
Westlands

2. Central Province

Nyandarua District:

Kinangop
Kipipiri
Ndaragwa
Ol Kalou

Nyeri District:

Kieni
Mathira
Mukurweini
Nyeri Town
Othaya
Tetu

Kirinyaga District:

Gichugu
Kerugoya/Kutus
Ndia
Mwea

Maragua District:

Kandara
Kigumo
Maragua

Murang'a District:

Kangema
Kiharu
Mathioya

Thika District:

Gatanga
Gatundu South
Gatundu North
Juja

Kiambu District:

Githunguri
Kiambaa
Kabete
Limuru
Lari

3. Coast Province

Kilifi District:

Bahari
Ganze
Kaloleni

Kwale District:

Kinango
Matuga
Msambweni

Lamu District:

Lamu East
Lamu West

Malindi District:

Magarini
Malindi

Mombasa District:

Changamwe
Kisauni
Likoni
Mvita

Taita-Taveta District:

Mwatate
Taveta
Voi

Wundanyi

Tana River District:

Bura
Galole
Garsen

4. Eastern Province

Embu District:

Manyatta
Runyenjes

Isiolo District:

Isiolo North
Isiolo South

Kitui District:

Kitui Central
Kitui South
Kitui West
Mutito

Machakos District:

Kangundo
Kathiani
Machakos Town
Masinga
Mwala
Yatta

Makueni District:

Kaiti
Kibwezi
Kilome
Makueni
Mbooni

Marsabit District:

Laisamis
North Horr
Saku

Mbeere District:

Gachoka
Siakago

Meru District:

Central Imenti
North Imenti
South Imenti

Meru North District:

Igembe
Ntonyiri
Tigania East
Tigania West

Meru South District:

Nithi

Moyale District:

Moyale

Mwingi District:

Mwingi North
Mwingi South

Tharaka District:

Tharaka

**5. North Eastern
Province**

Garissa District:

Dujis
Fafi
Lagdera

Ijara District:

Ijara

Wajir District:

Wajir East
Wajir North
Wajir South
Wajir West

Mandera District:

Mandera Central
Mandera East
Mandera West

6. Nyanza Province

Bondo District:

Bondo
Rarieda

Gucha District:

Bobasi
Bomachoge
South Mugirango

Homa Bay District:

Ndhiwa
Rangwe

Kisii District:

Bonchari
Kitutu Chache
Nyaribari Chache
Nyaribari Masaba

Kisumu District:

Kisumu Rural
Kisumu Town East
Kisumu Town West

Kuria District:

Kuria

Migori District:

Migori
Nyatike
Rongo
Uriri

Nyamira District:

Kitutu Masaba
North Mugirango
West Mugirango

Nyando District:

Muhoroni
Nyakach
Nyando

Rachuonyo District

Karachuonyo
Kasipul Kabondo

Siaya District:

Alego
Gem
Ugenya

Suba District:

Gwassii
Mbita

7. Rift Valley Province

Baringo District:

Baringo Central
Baringo East
Baringo North

Bomet District:

Bomet
Chepalungu
Sotik

Buret District:

Bureti
Konoin

Kajiado District:

Kajiado Central
Kajiado North
Kajiado South

Keiyo District:

Keiyo North
Keiyo South

Kericho District:

Ainamoi
Belgut
Kipkelion

Koibatek District:

Eldama Ravine
Mogotio

Laikipia District:

Laikipia East
Laikipia West

Marakwet District:

Marakwet East
Marakwet West

Nakuru District:

Kuresoi
Molo
Naivasha
Nakuru Town
Rongai
Subukia

Nandi District:

Aldai
Emgwen
Mosop
Tinderet

Narok District

Narok North
Narok South

Samburu District:

Samburu East
Samburu West

Trans Mara District:

Kilgoris

Trans-Nzoia District:

Cherangany
Kwanza
Saboti

Turkana District:

Turkana Central
Turkana North
Turkana South

Uasin Gishu District:

Eldoret East
Eldoret North
Eldoret South

West Pokot District:

Kacheliba
Kapenguria
Sigor

8. Western Province

Bungoma District:

Bumula
Kanduyi
Kimilili
Sirisia
Webuye

Busia District:

Budalangi
Butula
Funyula
Nambale

Butere/Mumias District:

Butere
Khwisero
Matungu
Mumias

Kakamega District:

Malava
Lurambi
Shinyalu
Ikolomani

Lugari District:

Lugari

Mount Elgon District:

Mt Elgon

Teso District:

Amagoro

Vihiga District:

Emuhaya
Hamisi
Sabatia
Vihiga

Section 1: Voices from Nyanza Province (Siaya, Kisumu, Homa Bay, Migori, Kisii and Nyamira counties)

Introduction

One of the best experiences for me in the Constitution Review process was to have face-to-face discussions with women from all corners of this diverse country in various fora. For instance, going to South Nyanza, a region endowed with beautiful hills, was for me quite an experience. Not that I had not gone there before, but this time it was to listen to the people—both men and women. To give them the opportunity to give their perspective on issues that they had discussed during civic education and consolidated or just reflected on. It was a humbling experience in many ways to listen to men and women open their hearts to the commission and express their hearts' desire. While in Nyanza, and looking at beautiful hills, I felt like singing:

“The hills are joyful together”,
“Go tell it on the mountain” or
“Oh Lord my God, oh how in awesome wonder.”

When there, you want to sing from top of these mountains that look like God was never in a hurry in shaping them. You look at the Great Lake. I will call it the Lake of Akoko, the daughter of Chief Odera Gogni, a woman of courage, a woman of dreams. I don't believe such a wonderful nurturing lake should have the name of a foreigner, Queen Victoria? You look across the lake and you see the islands, small islands, where the people of Otieno Kajwang the then MP for Mbita constituency lived and still live. But you also see Rusinga Island, the land of the great son of Kenya and Africa, Tom Mboya. You travel around Bondo and there you will find the people of Jaramogi Oginga Odinga, the great Kenyan patriot, the home of Grace Oryango.

The land of Grace Ogot's *And the rain came*, (1968:112) Luoland is the land of beautiful tall women. They carry their load on their heads and walk with their heads high. It is also the land of Gor Mahia whose exploits and magic came from his paternal and maternal grand parents, who were great magicians in Luoland. “A man of great courage,” says Adrian Onyando (2003) in his *The Epic of Gor Mahia*.”

But most of all, for me, it is the land of Akoko, the daughter of Chief Odera Gogni, wife of Owuor Kembo and the Mother of Nyabera and Awiti's grandma. Although Akoko is the creation of Margaret Ogola in her novel *The River and the Source* (1984), the character for me presents the image of the struggling African woman whose power, courage and determination has to rise to the fore. As the father, Chief Odera notes “a home without a daughter is like a spring without a source” (Ogola M., 1994:9). Akoko was beautiful, spirited, nurturing and she felt that “Were, – the god of Ramogi – had forgotten to

create a man good enough for her.” Akoko demonstrates her power as a woman and keeps advising her daughter, Nyabera, and grand daughter, Awiti, and supporting their struggles. She makes the society recognise that “Mikai, the first wife, is the Centre post that holds up a man’s hut. “Without her, or if she is stupid, only Were could rescue such a man from being blown away from among the people like so much chaff” (Ogola M., 1994:34). For her, like many women, “each day rises, fresh from the hands of Were and brings with it whatsoever it will”. She is the mother of Phoebe Asiyo, Jael Mbogo, Ayoo Odicoh, Grace Onyango, Grace Ogot, and many, many others in the line of duty. Margaret Ogola has given the women of this country a gift—Akoko, a woman who reflects many others in our society.

It dawned on me as I listened to people of *Nyanza* that Kenyans needed a new constitution, if not for anything else, to be able to facilitate resource allocation, focus on ensuring basic needs of our people and getting rid of poverty and corrupt systems. If one was hungry like many here were, it was difficult to see the beauty of these joyful hills.

But Nyanza is also the land of the Abagusii, the people who are relatives of the Ameru, the land of great heroine Prophetess Moraa, who advised the Abagusii to expel the British. She organised the Abagusii around Kitutu and Nyaribari to revolt. Prophetess Moraa (Ogot, 1969) would not be listened to by Gusii men so she offered her son beer and medicine and told him to go and kill Northcote, the white District Commissioner, as an example for the rest of the Gusii men. So, Otenyo speared Northcote and people thought he was dead. Moraa then went ahead and mobilised people around Kitutu, Nyaribari, to revolt. She was arrested and punished” (Kabira and Nzioki, 1994:38). The women from the Gusii community seem to have sworn their loyalty to the soil. They are friends with banana plants that seem to understand that they are nurturers.

Presentations

Let us share a women session that took place in Nyanza Province on 20.6.2002. We are sitting in a room fifteen of us in Nyando District. The women are all young, in their twenties and thirties except Awour who is in her mid fifties, although you cannot be sure. The sun, rain, cold, heat, hard work, load of tradition and hunger on her back, have withered her body. Burden of work, child bearing, and child rearing among other problems makes her view young women in here as her children. She seems to take charge at the meeting and speaks in dholuo, her mother tongue. What I gather is that Awour is introducing me to the group. She states that I have come from Nairobi and I am staying in a hotel in Rodi Kopani in Homa Bay with other commissioners. Commissioner Mutakha Kangu and Commissioner Ibrahim Lethome were sitting outside listening to the men from the constituency.

Awuor then turns to me and explains in Kiswahili that the women are ready to give their views. She identifies the woman who will begin. They will follow the order she has given them. We are in one roomed mud house which is beautifully kept and whose walls are plastered with cow dung. The table in the middle has an immaculate white table cloth with hand embroidery. The edges of the table cloth have flower patterns which are blue, orange and green in colour. The women sit quietly waiting for their turn to speak and Mary Awour begins:

Mary: Akinyi, you can begin.

Akinyi: Me?

Mary: Yes, you. Do you have something to share? What do you want to be put in the new constitution?

Akinyi: I want the constitution to protect old women like me.

Mary: What do you mean by old women like you? You are a young woman.

Achieng: Her husband has two other wives. It is like all of us. When you have children, you are so busy and men want to be looked after. So they go looking for one who has no child— one who can look after them.

Mary: I know. I understand what you are saying.

Achieng: I am already thirty and I feel very old myself.

Akinyi: You see, when I got married, he was very good to me. He would come home everyday with something for our child and me. Sometimes, he would bring half a kilo of meat or fish. Now he does not sleep in my house. He says I smell, I am dirty, I don't cook well and that I have grown old. I have four children now; the oldest one is now eight years, and the youngest is one year old. I don't have anyone to help me with the children when I go working in the garden, or fetching firewood. I have to go looking for food everyday.

Mary: How old are you, Akinyi?

Akinyi: Twenty-four years.

Wanjiku: Twenty-four years old. You said you are old.

Akinyi: You see I got married along time ago. It is now eight years since I got married. I was going to school but there was not enough food in our home. My father gave me to these people. My husband's people. I had grown up in these plains where nothing grows. There is famine all the time. It is very dry. We are not lucky like those nearer the lake who can go fishing. We are between the hills and most of the time it does not rain. They say we are in the area where there is rain shadow. We are eleven in my mother's house. My father has four wives, so there are many other children in my father's homestead. My parents could not

feed all of us so I was given away to my husband's people. They said, if I could get food, they would be happy.

Mary: Did you get food?

Akinyi: Yes, where I got married, we get food often but now, my husband has two other wives and as I said, he abuses me every time. He beats me when he comes home. He says I am dirty. So I want this constitution to protect women who are old and married like me.

Mary: Anything else, Akinyi?

Akoth: What Akinyi is saying is true. Many of us are just dumped after we have children. You see, you're so busy looking after the children that you have no time for yourself. My husband has all the time for himself. He bathes with the water I fetch; he eats the food I have cooked. He looks well as he goes to meet other men.

Akinyi: Also, I would like the government to help women of Kenya to get land of their own. I want my children to grow up where they have land. Where I am, I have a very small piece of land and although I grow food for my children, it is not enough. Sometimes, I grow tomatoes and sweet potatoes that I sell but I get very little money. Bananas also grow, but the land is too small. I don't get enough to sell and to feed my children. So, I wish I could get more land from the government because my husband's two acres are already divided into three pieces because we are three wives. The land is too small.

Mary: Anything else?

Akinyi: Yes, the government should provide us with medicine and water. We have no water here; we walk very far to fetch water. Sometimes, I leave at 5 am to go and fetch water for drinking so that by seven in the morning, I am back. In the dispensary here, there are no nurses and there are no drugs. We have malaria all the time and sometimes you just wait for it to get out of your body or you go to the kiosk and get medicine.

Mary: That is true, we need drugs here and we need nurses. You have spoken for many of us.

Comment

Akinyi, an otherwise beautiful, tall, elegant young woman is already an old woman. She has reached old age at the age of 24. Where are the joys of motherhood? Culture, poverty and her status in society have made her what she is. "Akinyi" which means "born in the morning", is a symbol of women I saw in many parts of this country, women young in years, women in their twenties who have gone through full cycle. They have been born, married, given birth, worked for their children and now ready to live the lives of old women. They have become their mothers. When you listen to her, she speaks

like she was sixty-five years old – the tone, the language, and the voice is that of an old woman. Her life seems over. She is at the “sunset soon after sunrise”. She has no hope, no other expectations except to look after the children. Marriage and childbirth is the end of the story. But Akinyi must have had her own dreams as she grew up? Or did she? It is Elieshi Lema, the Tanzanian scholar in *Parched Earth*, who says:

“Marriage is like walking in the rain, in the cold, wet season, without an umbrella. You get soaked through the skin before you know what happened. You get possessed by the rain, by the wet clothes which cling to your body, making it curve out like a claimed territory. There, you are imprisoned in that state. The choices are hard for there would be no difference at all between standing still in one place in the rain and walking with your clothes off. The choice is walking on... meeting the rain head on... and leave as you make the inevitable movement forward.” (2001:141)

I would add that, romance, enjoyable life, career and other fulfilments are alien concepts.

What happened to Akinyi’s world of love, of intuition, to her language of poetry, of dreams? Yet, Akinyi is not alone. The rest of the women shared Akinyi’s story, their cases were not different. A life of struggle, death of the spirit at a very early age. She wanted the constitution to address the basic needs, food, water, health, land, security. Her story is the story of many other women.

Ndhiwa Constituency where we listened to the people on 20.6.2002 and 21-6-2002 (Present: Commissioner Mutakha Kangu, Commissioner Lethome and I)

Rose Otieno told us: All mothers should be given land; wealth should be equally distributed between husbands and wives when there is divorce. Wife inheritance should be stopped. Girls are being married off so that boys go to school. That should stop and men who beat their wives should be arrested.

Jane Were, on her part had this to say: Wife inheritance should be abolished and girls should not be married when they are young – rapists should be given a death penalty and Affirmative Action should be used to increase women’s participation in decision making. Employment should ensure equal participation of men and women.

Esther Auma: Violence against women should be stopped. Wife beating should be banned. Those women who are employed should get the same benefits as men. Widows should not be inherited. If it has to happen, then HIV tests should be carried three times a year. (Esther expresses the views of many women in Luo Nyanza.)

Mary Auma: Rape cases should be dealt with severely. If one infects a woman with HIV/AIDS, he should get life imprisonment. Women should be allowed to operate freely. Title deeds should have both the husband's and the wife's names. A child whose mother or father is a Kenyan should be a Kenyan citizen. Every one should be able to get food, health, water and education.

She was also of the view that wife inheritance should continue: If the widow has big children, then the inheritors should not come home but we also need to follow traditions.

Mary Auma Ooko told us: Widows should not be inherited – they have been left behind by their husbands and so they should not be troubled. Inheritors come to spend what a woman has. Sometimes you have big children and then you are forced to be inherited.

Millicent Akinyi: Wives should not be inherited because this brings diseases. Give women's rights as in any other countries. Give them a chance to participate in elections. However, wives should be beaten.

Florence Ngeso: Women should not be beaten but they should be restricted. Girls should be given land. Women and men are equal.

Grace Ojwaya: Girls should find better ways of getting married.

Jessica Achieng, a fifteen year old: Girls should be given land; Affirmative Action for women is acceptable. They should be given their rights.

Margaret Adhiambo: Women should not be beaten and girls should have land. Property should be given to both women and men.

Some men at this session had various views on women's issues:

William Okoth, (a male presenter, at the same sitting): Women should be elected like everybody else. Women who marry non Kenyans should not be Kenyans any more. Women should marry whom they like.

Landislaus Odwade said: Girls should not be allocated land by their fathers, and clan elders should be paid for serving the community. Retirement age of men should be sixty and that of women at 45 years because at the age of 45, a woman is already old. Why should we retain such a woman in employment?

Isaiah Wasonga: Women should not wear trousers and should not go to night clubs. Beating of wives is recommended. If she dies without beating her, you have to beat the corpse. Gender equality and Affirmative Action is a waste of time. Girls should get the land from their husbands. Title deeds should be in the names of the husband only because women are on transition and are transferable.

Otieno Nyandenge Williams: There should be equal opportunities for men and women and free education for all. Fair representation for women and

men – no need to ask women to go back to their parents in order to get IDs.

David Otieno who spoke on behalf of Fuenyi Women Group said: Violence against women should be punished. Land should be given to girls who are not married; either give land to girls or don't give birth to them.

Maurice Odoro said: Girls should not be given land because if they get land, they will refuse to marry.

Benjamin Openda of Mabati Mbili Women Group who made the presentation on behalf of women group which had 12 women and 5 men had this very clear proposal: Women should get 30 per cent of seats in parliament and 30 per cent of natural resources should be given to women.

John Okuri: Women should not be inherited. If she is not moving around with men, she is okay. Often, if she is young and the husband has died, she goes to Homa Bay to look for men. Only those who are 60 years old and above should not be inherited.

Patrick Lumumba: There should not be exploitation. We should have one man, one job, one woman one husband, one man one wife and beating wives is not necessary.

George Aditi (a fourteen year old boy, who was in standard 8): Girls should not be given land. Wives should be beaten.

Bernard Ochieng: Women should be inherited by one person because they move around if they are not inherited. Men are also being beaten by women but they do not say it. Men have a right to land; boys and girls should inherit land from their parents. Title deeds should be in the names of husband and wife.

Walter Opondo: Widowers should be paid something. Widowers whose wives have died should not be allowed to remarry.

Japheth Onono, (70 year old): Women should not be beaten; there are many ways of disciplining women.

Joseph Apiyo Ongoro: Government should give girls land.

At a Constituency Public Hearings, Gwasi Constituency held at Sindo D.O's Office on June 19th 2002

There were only two women who presented their views although there were more than 60 present.

Felister Onyango wanted: Government to help orphaned children, the chiefs to be transferred, votes to be counted at voting stations, and labourers to be protected.

Alice Orwa (presenting on behalf of women of the Central Division) wanted: no dowry, equality of men and women, no discrimination. If the

president is a man, the vice president should be a woman. No wife inheritance.

Sido Town, Central Division: This was a very active session in *Nyanza Province* though only four women attended and submitted their views.

The four women's submissions:

Alice O. Rwanda (who was from Maendeleo ya Wanawake, Suba Branch) In summary, she wanted: Daughters to be given land, wife inheritance to be done away with, paying dowry to be stopped, equality between men and women, equal representation between men and women in political party structures, if the president is a man, the vice president be a woman.

Roseline from Sido Moi Girls School wanted: Members of the judiciary to be elected, separation of local government elections from that of president and parliament, 25 per cent of parliamentary seats to be reserved for women, strengthening of the police force, punishment for rape crimes, and president not to be chancellor of all universities.

Alison Otieno wanted: No detention without trial and there be provision for teaching the constitution in schools.

Philgona Okundi, a woman leader had also presented at an earlier meeting at Imbo Market in Rangwe on 13-6-2002 where she said: We need to improve our agriculture, have a free judiciary, and get rid of corruption. Girls should be entitled to land. The days when girls used to be told to live with wild animals are gone. We want equal distribution of resources, have employment. Retrenching 35 year old man is a disaster particularly when one has just married. Abolish importation of maize and milk. Violence against women should be removed.

In Sido Town she wanted: Facilitation for the disabled, social security fund established, transparency and accountability, free judiciary, no corruption and that girls be entitled to land. "The days they used to say girls are wild animals are gone," said Philgona who also wanted women to be left alone to do business, the constitution to ensure equitable distribution of resources, rural electrification, and abolition of importation of maize.

Men also submitted:

Mr. Okech Peele of the Eco-vic Kenya chapter: He covered areas of the preamble which he said should promote the spirit of peace, love, unity and human rights; reduce excessive powers of the president; to stop corruption, hooliganism, assassination of leaders, dependency on donors, church abuse and insecurity, among other issues.

Moses Onam Nyakiya: Like many other male presenters wanted mayors and chairs of Councils to be elected, and the number of political parties to be limited.

Harrison Obinya Otieno (representing Catholic Justice and Peace) wanted health services to be provided and corruption to be eradicated.

Joseph Odhiambo, wanted a federal government, free education for boys and girls, security provided and corruption eradicated, among others.

Mr. John Wasonga Kibusu the chairman of the council, noted: “When you see a policeman, you see a thief.” He wanted the police powers to be reduced to zero, use traditional system of oathing, nomination for persons with disabilities, and the constitution to reduce presidential powers. On women, he wanted daughters to be given land.

Elizabeth Ochala Aniani, a young woman born in 1988, wanted girls to be given land.

Comment

Philgona Okundi was one of the women presenters who were very involved in the Women’s Movement through Maendeleo ya Wanawake, YWCA, and the Women’s Political Caucus.

For a well informed woman like Philgona and many other women relating their poverty to equitable distribution of resources was not difficult. For her, women’s rights, governance issues and structures of government are familiar issues in addition to basic needs and other issues.

We also recognise that as a member of Women’s Political Caucus and Maendeleo ya Wanawake, Mrs. Okundi had participated in educating the women and identifying issues that would find their way into the Constitution. Her statement was powerful and well informed.

In Rangwe Constituency, at another hearing, we were at Ndiru Chief’s Office

Martha Auma Onyango, Maendeleo ya Wanawake Treasurer, wanted: Full guarantee of women’s rights in the constitution, women to have full share of their father’s land, protection of the girl’s right to education, title deeds to have both the husband and the wife’s name, forced marriages to be done away with, husband and wife to have equal rights to confer citizenship to the children and spouses, mayors and councillors to be elected directly, and the right to recall MPs.

Hilda Otieno, (a teacher), wanted: To have a preamble in the new constitution, free and compulsory education up to form two, Affirmative Action for women at all levels, and people with disabilities, protection of women from all forms of discrimination, right of recall for members of parliament.

Hilda Awuor Adhong wanted: Parents to give equal opportunities to boys and girls.

Milka A. Aduar, Chairlady of women in Seventh Day Adventist (SDA) and representing her church, SDA, wanted: Women not to share land with their daughters. If a daughter is not married because she is big headed, it is her problem. God never wanted girls to be single. Her flesh will force her to have children with her brothers. Only shallow minded women decide to leave their husbands. Divorced women bring a lot of corruption in the society and marriage is very good for women. Too much knowledge is destroying our country. Girls should be outlawed if they don't get married. Send them to town.

Aloyse Nyabola, a male presenter, submitted: That women should not be employed if they have no husbands, and if they leave their husbands they should be sacked. Title deeds should be in the names of husbands and girls should inherit their parents' land. A girl should be able to claim the will of her father and women should not be inherited by force.

Stanley Ayu Ogebo, (a male retired civil servant) wanted: Social protection for the aged and Affiliation Act to come back. On other issues, he wanted one man one job principle; village elders to be paid and the powers of the president to be reduced.

Cecilia Obunga, from a widows' group noted: Widows have problems getting benefits from their deceased husbands.

Other issues mainly raised by men included:

Equal access to justice, decentralisation of resources, equal distribution of wealth and reduction of numbers of political parties. Elections and voting methods that needed to be improved on and reduction of powers of the president (the feeling that the president was too powerful was reflected in almost all constituencies).

Imbo Market, in Rangwe on 13-6-2002

Mary Teresa Ogutu (blind) wanted: Decentralisation of opportunities, opportunities for persons with disabilities, abolition of child labour, equal opportunities for women and district boards to have disabled persons representatives.

Monica Atieno Afuodi, of Kenya Women's Political Caucus wanted the Preamble to include justice and liberty, supremacy of the people, openness and accountability, respect for human rights, the right to information, protection of women against violence, the office of an ombudsman to be established, and equality of boys and girls to be ensured.

Filida A. Odeny wanted: Inheritance of women and forced marriages to be done away with, and severe punishment for rapists. "Wife beating

should end, in the name of Jesus Christ,” she cried. She also wanted women equal rights to be in the constitution and equality between boys and girls to be enhanced.

Monica Akira wanted: Retirement age to be extended to 60 years. Women economic rights, parliamentarians not to decide on their salaries, primary school teachers to be treated fairly.

Joyce Ongenga of Maendeleo ya Wanawake was of the view that we should: Get rid of traditional practices that are negative, free education for all, equal rights for men and women, title deeds to have both names of husband and wife, widows to be represented in parliament, men who marry underage girls to be jailed, care and support for older women, equal opportunities for jobs, better salaries and wages, Affirmative Action for women’s representation in parliament and local authorities, violence against women to end, and jailing of rapists.

Roselyne Okoth wanted: Equal access to land for both boys and girls, chiefs to have powers to deal with land, the poor to be looked after and women to be in leadership positions.

Section Summary

In Nyanza Province, the information gathered indicated that women had specific issues that were of concern to them. We have gone through a number of constituencies in Nyanza Province including Rangwe, Mbita, Gwasi and Ndhiwa constituencies.

A sample of views of the women in Nyanza Province clearly indicates that majority of the women who addressed the commission and spoke as individuals focused mainly on: access to land for boys and girls, inheritance by both boys and girls; widow inheritance – a tradition which women wanted the constitution to stop; marriage, polygamy, access to basic needs e.g. water, food, health, education, employment and security. In addition, women wanted Affirmative Action for women’s representation in leadership positions and punishment of all those who are involved in all types of gender based violence and heinous crimes such as rape. Women did not hesitate to say they wanted equality. Women also wanted equitable distribution of resources, government to be closer to the people and communities to control their own resources.

Men’s views on the same issues were varied. Some supported women views while others would want to continue denying women access to land and control it, widow inheritance, among other issues.

As we have noted elsewhere, even when we talk of tradition, we have to ask ourselves, whose tradition? For whose interest? Because the issues dealt with by the women in this community clearly indicate that some traditions are not in women’s favour and interest. They are for maintaining the status of men in the community.

Denying women land means they will marry, if not for anything else, in order to have access to land.

In this province, a number of men supported women's issues referred to above. Two of the submissions by women were the only ones that negated the women trail of thought. We also note that there were a number of presentations from women's organisations. Maendeleo ya Wanawake Organisations presented views in various constituencies, so did Women's Political Caucus representatives, representatives of various women groups as well as church representatives e.g. the Catholic Justice and Peace and the Seventh Day Adventist Church. In the cases of women's organisations e.g. Maendeleo Ya Wanawake Organisation and Women's Political Caucus, issues of powers of the president, elections, and institutions of governance were also highlighted. Individual women also focused on inheritance issues, land issues, basic needs e.g. water, health, security, food, education for boys and girls, as well as gender based violence.

What can we say about Mary Owour in Ndhiwa on 20/06/2002 whose view runs contrary to those of other women particularly on issues of inheritance? We have noted elsewhere that the processes of myth making and those of socialisation create situations where women live in a man's world; where women have no place. If one were to follow the presentation of Mary through inquiry, we may find that what she is saying in public is not what she means in private.

Section 2: Voices from Western Province

(Kakamega, Vihiga, Bungoma and Busia Counties)

Introduction

In Western Kenya, you meet the people of Vihiga, which means the land of stones. It is the land of Priscilla Ombonya, as said earlier, the only woman who was present at the Lancaster House Conference for negotiations of our independence constitution. The stones look at you as if they are saying, “Cry, Our Beloved Country.” The stones are shaped like women crying. Can any one blame them? It is Okot p’ Bitek, the great son of Africa, who says of African Woman in his *Song of Lawino*:

Woman of Africa
Sweeper
African Woman
Smearing floor and walls
With cow dung and black soil
Cook, ayah, the baby on
Your back

Washer of dishes
Planting, weeding, harvesting
Store keeper, builder
Cart, lorry
Donkey

Woman of Africa
What are you not? (1972:113)

When you are in Vihiga, you want to ask why these stones, shaped like women cry? I suspect they respond to years of oppression, years of scorching sun. Others, however, stand defiant, resisting the sun, the wind and welcoming the rain. Those in pain seem to say with Gloria Hall, a great daughter of Africa, in her poem, “*Somebody, Somebody*”.

I need somebody
To touch me
In a healing way

Somebody
Somebody

To touch me
With love
Somebody
Who can hold this depth of pain

Hold me crying tears
For every woman
Whose being a woman
Has ever made her cry.

Unshed grief
Running out slowly
In a river of cleansing salt. (Busby's *Daughters of Africa* 1992:580)

Does this surprise you? When you heard religious leaders say “NO” to the constitution because Article 26 on abortion says, “Abortion is not allowed.... except when a mother's life is in danger,” (Constitution of Kenya 2010, p. 25). Do they want to see a pregnant woman die, for that was the message?

The land of the stones looks beautiful and defiant. These stones, like the women in this Vihiga land, have weathered every storm and every scorching sun. When you drive around, you meet men and women who have sworn their loyalty to Mother Earth. They have cultivated every inch of Kakamega, of Vihiga, of Busia, of Bungoma. You stop by small markets on the road side and you will find women selling bananas, sweet potatoes, Irish potatoes, all kinds of fruits. But does the earth reward them? You can buy enough sweet potatoes for a week with less than a dollar. Yet, this one dollar is not enough for even one packet of *Unga* (maize) flour. Should we ask God to forgive this world which treats some people like children of *Edemili*, the lesser god of the Ibo people of Nigeria.

On the other side, still in the land of Luhya, is Busia where even cassava seems to refuse to grow. There, poverty stares you on the face. When you go to Funyula and you are told that those hills block the rains, that some people live in the rain shadow, you want to ask God why?

Poverty, lack of basic needs of these people and the rest of Kenyans, gave the hope that the constitution would create a new social economic order. A new order where basic needs, at least, would be available. That is why every woman who spoke wanted the Constitution to ensure Kenyans had water, health services, security, food, education and employment for the youth. Article 43 of the new constitution entrenches these basic rights. When our leaders deal with land questions, equitable distribution of resources, greed, corruption, strategic development policies, among others, *that will be the day that the Lord will have made and we shall rejoice and be glad in him.*

Let it not be said that we Kenyan women have not had our heroes in the struggle for Kenyans. We only need to look around and we shall see Sister Francis Lotodo who was expelled from Kakamega Convent where she was the Mother Superior. She had dared to send the sisters of the Congregation of Mary to school which was not acceptable to her Bishop – for that, she was declared *persona-non-grata* in the diocese. She had to look for a place to stay

in Nairobi. It is the land of Julia Ojiambo, she of the Labour Party. The women's song of *mwana wa mberi* often sang by Helen Oranga Mwanzi at every available opportunity, the land of weeping stones. It is the land of great dancers who can easily challenge the Kambas and Giriamas.

Presentations

We start with Funyula Constituency at Moody Awori Primary School in Funyula Constituency on 31.7.2002 where Prof. Okoth Ogendo and I listened to people give their views. The session was very well attended. Sister Agnes Maulo, a Catholic sister who wanted free education for all; special schools for girls; protection from HIV/Aids; those who deliberately spread HIV/Aids to be charged with murder; women to be given the rights, and proper process of identifying chiefs to be put in place.

At the same venue, young girls, Winnie Nangila (13 years) from standard VI in Nangina Girls School, Lilian Oyalo (12 years), Pauline Osogo (14 years); Mercy (13 years) and Oeri (12 years) wanted:

Those who rape and spread HIV/Aids to be jailed; harsh punishment for teachers who make girls pregnant; both boys and girls to go to school; lunch schemes for the poor; equal opportunities for both boys and girls; corporal punishment to be reviewed; child labour to be abolished; children's rights; and 14 years in jail for rapists.

Other girls, including Lucy Karaya (17 years), Brenda (17 years) wanted women to inherit land; free education for all; sugar daddies to be punished; and employment for school leavers.

The Headmistress for Nangina Girls Secondary School, Assumpta, wanted women to have the right to inherit land; wife-inheritance to be stopped; no forced marriages; no discrimination against women; if the president is a man, a woman to be vice-president; and polygamy to be abolished.

Brenda Okoch, Anglican Church of Kenya (ACK) Nabidu, women leader, wanted women's rights to be guaranteed; women to be free to marry; women to be able to own property and inherit the same from their parents

At this venue, many men presented their views. Among them was Hon. Moody Awori who was then an MP in the Moi Government. He would later become Vice President in President Kibaki's National Rainbow Coalition (NARC) government. The men focused on citizenship, land, environment, protection of water sources, afforestation of Salvia Hills, Mt Kenya, Mt Elgon, etc; renegotiation of treaties, e.g. the Nile Treaty; a unitary state government; review of governance structures; revenue collection for local authorities; structure of government; number of ministers to be a maximum of 15 and

assistance to be given to people with disabilities. He also added his voice on women's rights and said that women should not be discriminated against.

At Sio Port Health Centre, in Funyula on 18-8-2002 among the women who spoke was Mary Ngweno who wanted women to have equal access to land with men and that land title deeds to have both the name of the husband and that of the wife. She also wanted all Kenyan citizens to be able to access land anywhere in the Republic and women inheritance to be allowed; boys and girls to have equal shares to their parents' property.

And like Redempta, Rachael Migongo wanted free primary and secondary education, Affirmative Action for equal representation in all areas beginning with parliament; proportional representation; district women's representation and recognition of women who fought for independence.

Hon. Dr. Julia Ojiambo, a long serving Member of Parliament and a woman who, in her time in parliament, worked on many legislations and who also has been part of the backbone of the women's struggle in this country, was also at Sio Port Health Centre. Julia was also the chairperson of the Labour Party of Kenya. She later became the running mate for ODM-Kenya Presidential candidate Hon. Kalonzo Musyoka during the 2007 elections. She wanted: the President to have 50 per cent of the votes; age not to be a determining factor in leadership; two terms of five years for the president; reduction of powers of the president; Prime Minister to be head of government; a unitary government with strong decentralisation to local authorities; local authorities to be funded through a consolidated fund and to take care of health, education, school feeding program, roads, etc, while central government would deal with highways, electricity, security, defence etc; a time table for elections; and revenue for local authorities. She also wanted Affirmative Action for women's representation; equality between men and women; proportional representation; property rights and basic needs of food; water and other issues to be addressed.

Alice Ogama wanted equal distribution of employment opportunities; reduction of MPs salaries; title deeds to be in the names of husband and wives; eradication of corruption particularly among the police; and assistance for the retired, while Lois Magwagwa wanted beating of women to be stopped and girls to inherit property from their parents.

There were very many men at this session too, including John Moganda of Funyula Town Council who wanted development of the lake industry. Mohammed Mubale wanted: a constitutional court; Kadhis' work to be limited to Kadhi courts, and Kadhis to use Islamic Sharia Law in case of moral misconduct for Muslims. An elected councillor, Agostino Makina, wanted government to review the agreement with Egypt on the waters of the Nile, powers of the president, to be reduced and the country to have a rotational president, among other issues. Dick Mukubi, Branch Chairman of Ford Kenya

wanted reduction of powers of the president, two terms of five years for president, a rotational president, reduction of political parties and payment of village elders, among other issues.

A representative of the Catholic Church of Samia, Mr. Nicholas Khaduli, wanted only men to be conferred with citizenship. He also wanted free medical care, food, water, education, no dual citizenship; president to be 35 years and married; two terms of the president and land matters to be dealt with quickly. On women, he wanted them to inherit their parents' property only if they were not married and if they marry, they lose their right to land, and the elderly to be taken care of, among other issues.

In Butula Constituency, Burinda Catholic Hall on 5-8-2002

At this session, Teresia Nahumacha wanted equal access to employment and 50 per cent women in parliament.

Asha Okumu, a woman leader, wanted girls and boys to equally inherit land; wife inheritance to be outlawed and rapists to be jailed. Angelina Asieno wanted women not to be left by their husbands after they have worked hard to build the home; domestic violence to be stopped and women to own land and other properties. On her part, Roselinda Opiba wanted girls to inherit property from their parents; and women who do 80 per cent of family work to reap from their labour. Carolynne Jakobam wanted all land title deeds to have names of husbands and wives. Faustin Odongo said: Girls to inherit land adding, "When you have only girls and your co-wife has a son, the one boy gets all the property. When the man dies, the wife should inherit the property."

At this meeting too, many men supported inheritance of property by girls and women. George Omondi wanted the constitution to get rid of dowry and both parents of boys and girls to help them start their home. Henet Nayoma wanted free education for both boys and girls while Chrispina Odima wanted all Kenyan children to have citizenship without discrimination. In addition, like many other men who presented their views, he wanted a minimum of three political parties; a parliamentary system of government; right of recall for MPs; two terms presidency; reduction of powers of the president; election of mayors; basic needs of water, health, security, food to be basic rights; one man one job; election of DCs; president not to be above the law; independence of local authorities; and a Bill of rights.

Other male presenters included Alex Osebe, and Peter Mbaye who wanted strengthened governance structures, and removal of provincial administration. Joseph Wanga wanted women to inherit their husbands' property, so did Faustin Odongo. Nicholas Were wanted both sons and daughters to inherit their fathers' property and have the office of an Ombudsman, among other issues. William Odhiambo, like many others, wanted village elders to be paid. He wanted girls protected. Alfred Ouma, a retired civil servant, wanted the

constitution to ensure no one gets more than 50 acres of land, lake boundaries to be addressed; and protection of all fresh water lakes; while Wilberforce Aringo wanted women to be protected against domestic violence; widows and orphans and widowers to be assisted.

In addition to these, Romano Ochiel wanted: both boys and girls to inherit land; women to get IDs without being told to go back to their ancestral land; and girls who get pregnant to be allowed to go back to school.

In yet another session in *Butula Constituency in Buhuyi Secondary School on 6-8-2002*, Carolyn Yamo, a 16-year-old from Buhuyi Secondary School, wanted to have girls' rights to education implemented, while Edith Mbwire wanted girls to inherit their fathers' property. Magdalene Njambi wanted widows and orphans to be protected. Carol Omoto wanted a Ministry of Women and Youth; girls to inherit land, police to protect the rights of the people and not to harass them; while Patricia Sanda wanted free education for all; girls to inherit land and other property. Many of the male presenters here had similar views as those of others in Butula Constituency hearings.

In Butula Secondary School on 2-8-2002, Paschalia Ochieng wanted basic needs of food, health, water, education, security, employment; bursary for poor families; married girls to be given land and shelter; village elders to be paid; brew making to be legalised and professionalised; and women to have land and property rights.

A woman leader, Prisca Onyango, wanted girls to get land; wives and husbands to jointly own land; free education for primary school going children; and squatters to be given land, while Gloria Mwabire, a woman councillor, wanted free health services; the local brew to be professionally made and legalised.

In Budalangi Constituency at John Osogo Secondary School on 29-7-2002

Among the women who spoke was Pauline Nagila on behalf of Budalangi Women Group who wanted the constitution to be sensitive to the needs of Kenyans; participatory governance; respect of law; accountable and transparent government; equal capacity for women and men to confer citizenship to their children and spouses; review of family law; 30 per cent women's representation in parliament and local authorities (as in Uganda); 35 per cent of judges to be women; and children's rights to be protected.

At Makunda Secondary School on 30-7-2002 in Budalangi, another very well attended session, Marcelina Oranda wanted rapists to be jailed; provision of health services, water, food and security to be made.

Helen Apiyo Gongo wanted the constitution to protect cultural rights; abolish wife inheritance; ban early marriages and FGM; free education, while Judith

Taka wanted women to be protected from beatings by their husbands, equal distribution of property between husband and wife, and no wife inheritance.

Many men, including Benedict Makhulo of co-operative society, Paul Baraza, a development economist, Patrick Oyagi of Paralegal Network, Josephat Magio of a teacher's technology centre, Vincent Wanjala, Budalangi Kanu branch Secretary, Charles Oruma, representing the village residents, Hon. James Osogo, former Member of Parliament, and a former Minister for Education, Cornel Mabachi, Algak, Lukas Were, 71 years old; Domiano Were (person with disability), Alphaso Otiato, CBO foundation, presented their views again focusing on: land; security; boundaries; presidency; devolution of power; political parties; and representation.

Similar views were presented at Osieko Secondary School in Budalangi on 7-8-2002 where Marcella Tembe wanted election of chiefs; wife beating to be outlawed; abolition of the "come-we-stay marriages"; property to be shared between husbands and wives; protection of women; Affirmative Action for women and persons with disabilities; and husbands and wives to confer citizenship to their children and spouses. Susan Naliaka wanted chiefs to only serve for a term of five years just like the members of parliament. She also wanted voters to have the right of recall.

Comment

It is very clear from the summary of issues in Western Province, as well as in other provinces, that this was a poor people's constitution and that men and women at the grassroots level supported women land rights; girls' right to inheritance; Affirmative Action for representation; dealing with gender-based violence; and right to citizenship, among other issues.

Many men gave their views with focus on issues such as: farming/economic issues; education; reduction of powers of the presidency; devolution; judiciary; local governance; representation; boundaries; equitable distribution of resources; political parties; and provincial administration; also women's issues.

In Western Province, women spoke loudly about land and inheritance; equality in access to land and other property; citizenship and women; girls and education; harmful traditional customs e.g. early marriages and FGM; Affirmative Action for women's representation i.e. 30 per cent in all decision making bodies; gender based violence, security, and basic needs, among other issues. But much more emphasised were issues of inheritance; girls and boys education and domestic violence—issues which seemed to be at the heart of the constituents.

Section 3: Voices from North Eastern Province

The Land of Inequalities: (Garissa, Wajir, Mandera and Marsabit counties)

Introduction

Collecting views from Kenyans took us to Northern part of Kenya. It is land of Rukia Subo, the Chair of Maendeleo ya Wanawake, of Fatuma Ibrahims, Sophia Abdi and many many gallant women. It is the land of the camel, she that knows that you need to store food for a rainy day and that should teach us to always remember that we should never wait for people to die before we look for food. Our granaries must always be full for our people. Many have heard of the horror stories of massacres, rape and degradation. The former Northern Frontier District, where every discussion reminds one of the terrorism of colonial rule, a rule that as, Ngũgi wa Thiong'o would say, dismembered Africa, where one community like the Somali Community was divided into groups with some being called Kenyan Somalis, others Ethiopian Somalis and yet others. Somalis from Somalia—just like the Maasai of Kenya and Maasai of Tanzania, the Teso of Kenya and the Teso of Uganda.

The colonialists, made sure we were either British, Portuguese, Italian, French or Spanish colonies. They erased our memory, our customs, our culture. They negated what we believed in and alienated us from our land, our history, our people and our God. It is time we realised we are One People, One Continent and agree with Pan Africanism ideals.

We reached the people of Northern Kenya, that is, of Wajir, Garissa, Mandera, Halugo, with a helicopter. There women and children, and even the elderly men wait for anything that moves to help them reach the hospital in Garish or Wajir. The name Wagalla reminds one of atrocities that our people have endured, of pain and misery, of grave sense of alienation.

But even here, women and men had their say during the collection of views in preparation for Kenya's new constitution. In Bura (Garissa) women sat together and whispered their story, away from the men. They had their views on polygamy within Islam, on property ownership, on love and marriage, on security, on their expectations in the new dispensation. They told their story and it was recorded.

They, like the women in Western, Nyanza, Rift Valley, Coast, Central, Eastern, Nairobi, hoped that the new constitutional dispensation would create the nation like the one we hope for in our National Anthem, one where 'Justice is our shield, our defender', where we will 'dwell in unity, Peace and liberty' and where we shall have 'plenty within our borders'.

Presentations

Wajir West Constituency on 5/6/2002

People of this constituency, like many other people in North Eastern Province, had a lot of bitterness. There, the people saw themselves as a marginalised community. We heard statements such as, “If one of us sins, the whole community is punished.” They wanted a just government; free education; security; and home guards to protect them. They were in dire need of medical services; they wanted proper roads; employment; screen cards removal; to go back to traditional boundaries; and most of all, peace.

Wajir West people also wanted compensation for the historical injustice executed among the people of North Eastern Province. They wanted protection of vulnerable groups; a truth and justice commission to be established to look at past injustices; review of Indemnity Act Cap 4, revocation of emergency laws, compensation for the more than 5000 people who were killed at Wagalla and others in Bagala and Garissa massacres in 1984; as well as the rights of minorities to be addressed.

One of the presenters at this hearing gave a personal testimony. He narrated to us how during the Shifta War, the soldiers ravaged the whole place, killing men and raping women. He narrated how his own three daughters were taken out of his home by the soldiers to the bush and raped.

“Fatuma was so young”, said the man as he sobbed. “She was only thirteen and they took her. When she came back, my little girl could not walk. As you see me here, I am not a man. They took me out and castrated me.”

The pain in this man was unbearable. It was as if he was going through the same pain all over again. In his mind, his little girls were being raped again. It was too painful to bear. “We don’t live in Kenya,” said the man, “we live in another country. We even carry an extra identity card, the pink card. We can’t get Kenyan IDs. I don’t understand why you have come to collect views from us. We don’t live in Kenya.” This man’s story would later be corroborated by others at a sitting in Mandera East Constituency where we listened to one of the men tell a story which will always be in my mind. It was the story of the 56 year old man who we had met in Wajir West who had told us in the midst of a huge crowd that he had no testicles; that he was castrated by the soldiers during the 1984 Wagalla Massacre, whose three daughters were raped, and that his wife had run away. Such stories encouraged many of these people to want a Commission of Inquiry to be established to look into crimes against humanity in Northern Kenya.

As they listened to the man, the older men began to move away one by one. The man had told the story of each of them. Collecting their views on the constitutional review from them was like a mockery to them. It was like letting

them live the pain all over again. One of the men in the audience looked at us with contempt. To him, we symbolised a ruthless, heartless government that had not only neglected its people, it was its people's enemy; a government that had brutalised its people. So what kind of a contract were we talking about?

Salim, one of the people in the crowd asked:

"What are you going to do with this information you have collected from us? I want to know whether we are going to be compensated for all the crimes that have been committed against our people. You see, you came in a police helicopter, because there are no roads, and no security. This is another country. This is not Kenya. Why are you here? Our people put their lives in the front line by keeping guard over Kenyan borders. What do they get for it? What did you come to do? To remind us of our suffering? We are not in Kenya."

We were embarrassed. What the man said was true. The District Coordinator stood and explained to the man that we were not government and that we would forward the recommendations so that their concerns could be reflected in the report. Mechanisms would then be identified to address the past injustices including the Wagalla Massacre.

At the same sitting, Commissioner Keriako Tobiko and Commissioner Swazuri received the views of many men and a few women's issues were also raised by men. The public hearings were well attended.

Adam Mulo, Hussein Hassan Hussein, Kanyari M. Yusuf, Musa Osman, Ali Dima, Duko Ibrahim, Mohammed Sherif, Bila, Sheikh Dakano, Sharif, Abas Nunar Hussain Jub Dow, Dand Ahmed Sugow Hussein Mohammed, Mohammed Farah, Muktar Sanbur, among others talked bitterly about marginalisation; the Truth and Reconciliation Commission; compensation for Wagalla, Wapagala and Banisa massacres where they said thousands of people were killed and property stolen, going back to traditional boundaries; getting rid of the screen card; security; that Islamic Law should prevail; internal displacement; to follow colonial borders; free education; water; medical services, free movement of the people- no curfew, among other governance issues.

At this session which had very few women;

Halima Osman had this to say: "Women should also have the right to lead. Islamic law should be implemented. If the president is a man; the vice president should be a woman. We should have free primary education."

Fadhuma Adam noted: "The suffering for the people of North Eastern has been great. All other Kenyans, apart from Somalis, have IDs. The Screen Cards should be removed; North Eastern has no roads and people lack food."

Mohmood Mohammed: wanted Affirmative Action for marginalised groups and Human Rights courts to be established to deal with:-

- Garissa Massacre 1981
- Mandera Massacre 1982
- Wagalla Massacre 1984
- Palcak Massacre 1988

Comment

Like other Kenyans, these people wanted higher level of education qualification for MPs and councillors; public protection; declaration of wealth; reduction of powers of the president; control of wealth; strengthening of Kadhis Courts; protection of leaders who teach Islam; to obtain IDs without problems. They wanted compensation for their stolen cattle; livestock marketing; among other things.

Ali Kalale, a 77 year old man, wanted a federal state where North Eastern could be a state on its own; to federate with other parts of Kenya but to be independent.”

Mrs. Halima Osman, the only woman to present at this sitting, wanted women to have the right to land. “They should also be allowed to take leadership positions,” she said.

We had our Constituency hearing on June 8th 2002 at Fafi Constituency in Bura-Garissa. The people felt that they were not part of the old constitution. Having lived in Bura since 1963, a Mr. Hassan Sheikh Hassaan talked of human rights abuse; insecurity; poverty; and problems with boundaries between Garissa and River Tana. Ahmed Dekhor wanted those killed by wild animals to be paid Ksh. 2,000,000 and not Ksh. 30,000 and compensation for those of their animals eaten by wild animals.

Many people in Fafi constituency wanted issues of governance addressed. Specific issues were: security; pastoralist needs; screen cards; exclusion; marginalisation; the 3 mile issue (which refers to a colonial period deal marking the boundary between the Coast region and the rest of the country).and settlement of refugees. I had a separate meeting also with the women and The following section captures the voices of those women.

Women Only Session

Com. Kabira: We are ready to begin.

Hawa Mahdi Adan: Our daughters are very young, as young as fifteen years but men come and lie to them about marriage. But after the men have sex with the young girls and have made them pregnant, they leave them.

We want to know what action the government will take to protect these children.

The other thing is about widows. After the death of the husband, the woman is left with the children. She should also be allowed to inherit her husband's property. In most cases, the woman is disinherited and she is left together with her children to suffer. The people who take away the property of the dead husband are mostly family relatives from the man's side. When your husband dies and you have children, the relatives do not come to say sorry. But when you get married to another man after three years, the relatives come and take the children and all your belongings. They say that if you marry another man, they will take all the property of their deceased brother.

Com. Kabira: Yes, Habiba.

Habiba: The other place where we have a problem is in education. Sometimes, you take a child to school but that child has no food for lunch, supper or even breakfast. After the entire struggle for many years, the child finally completes standard eight and is given a chance to continue to secondary school. But the school fee is almost fifteen thousand shillings and the parent cannot afford it. That is why I want there to be free education for all.

Here in Fafi, we have one Member of Parliament from Hargadera to Halugo. How can one MP know all our problems from Hargadera to Halugo? We also want more members of parliament to represent us here in North Eastern. Not just one or two but many members of parliament. I also want the constitution to state that whenever a man is elected, a woman is also given that chance. If there are two men in a government position, there should also be two women. Even the number of women commissioners in the constitution review should also be the same as that of the men. We don't want men to be too many. And we don't want women to be only two or three. If there are 20 men, the women should also be 20. We want to be equal.

Com. Kabira: Thank you very much.

Translator: Who else? Who else? Zainabu Gure.

Zainabu Gure: It is sad when you take your child to school and the child studies until he/she finishes secondary school but they don't get jobs. They are forced to just stay at home.

Com. Kabira: Yes.

Ijabo Nasib: There is something I want to say and I want all the other women to listen to this.

Com. Kabira: Okay.

Ijabo Nasib: You know, there is something that pains us a lot... It is about men. You find that a man marries a woman and brings her to town where his family lives. The woman is forced to depend on his family. Then the man goes away to work and leaves the woman whom he soon forgets together with his children. The woman and the children are left suffering. Islamic religion says that a man can marry four wives. But it does not say that you can marry four wives and then forget the first wife and her children. It is not right but you find that, our people, the Somalis, and especially the Muslims, have that problem. They get married again and then forget about the first wife and her children who continue to suffer because he only loves the second wife and her children. But when you try to speak against it, you are told that you are interfering with religion.

Interjection from another woman (A): If you go to the Kadhi's law, let's say the man marries another woman but he still takes care of you, then there is no way you can refuse him and say it's because he has married another woman. The only time you can refuse that man is when he marries another woman and does not take care of you including paying the house bills and the school fees for your children. But when the man loves you and cares about you and your family, there is no need to accuse him because in the *Sharia* laws, the men are allowed to marry up to four women. That is something that is there. It is in our religion. But if the man takes care of you and he still pays your bills and gives you everything you need, there is no need to accuse him and there is no way you can do that.

Interjection from another (B): What if he is not giving you proper care?

Interjection A: You can only accuse the man if he does not take care of you and your children. But once he takes care of you, there is no way you can accuse him. That is according to our *Sharia*.

Interjection B: When a man gets married to another wife, he forgets you. We are not saying that he sends you away. He still keeps you in the house. He does not divorce you but he does not take proper care of you and the children. Sometimes, he disappears for years and pretends that you are not there. After some years, he comes back and stays with you for one week and then goes back.

Interjection: If the wife refuses that man and asks for a divorce, then she cannot be given back dowry. But if a man marries you and then wants to divorce you, there is some money that he must give you in compensation. For example, it could be four cows.

Com. Kabira: Yes.

Ijawa: I also want to talk about something concerning women.

Com. Kabira: Can someone translate so that they can all understand.

Ijawo: I am going to speak in Somali and she will translate.

I want to speak about the problems that we face as women. You find that a woman gets married but she cannot give birth. The man does not know whether you will ever get pregnant even if he stays with you for centuries. For that reason, he leaves you and says, 'This woman is not giving birth. She should stay at home. I'll marry a second wife who shall give me children.' That is already interfering with religion and God's affair because it's only Him who knows whether you will give birth or not. I want to know what the constitution will do about that. I know it allows the man to get another wife but giving birth or not is God's case.

Com. Kabira: Now what do you want us to do about that? Your recommendations?

Ijawo: You know, a lot of time they say, 'This woman cannot give birth. I am going to try and marry another wife to give me children.' If the man can go to look for another woman, then the woman should also be given the chance to find another man because we also want children. That woman also has the right to look for ways to have her own children. Even if it means getting married to another man. It is not right to just keep her in the house saying she cannot give birth and then you go and get married to another woman as she suffers alone.

Com. Kabira: So you are saying that even the woman should have the right to leave and go to have children with another man.

Ijawo: The woman should have the right to leave that man. He should give her the divorce letter, the money he owes her and her bride wealth. He should not refuse to divorce her and force her into a marriage she does not want to be part of. He makes her hate him especially considering he was her first lover. Sometimes it is not because you don't have children together. You might have a few children like two, three or four. But the man wants more children. He leaves you suffering with the children and marries another woman to get more children. Muslims are different from Christians. We know that Christians marry only one wife and it is with her that they get children. Even if she does not get children, they still have faith in her. But we Muslims, if a woman fails to conceive for one year, the man goes to look for another one and refuses to leave this woman who is still young to go and look for her own man.

Com. Kabira: Thank you. Next.

Amina Siyat: The police are fond of harassing people over Identity Card (ID) cards. I witnessed another case—in fact it was me. I was travelling to the sides of the refugee camps. I was working with the Electoral Commission as a clerk. So when I was coming back on a bus, the police got onto the bus. I did not have my ID card. I had forgotten it in Garissa but I had all the other documents. They made me come off the bus and

then asked for Ksh 1,000. Where was I to get Ksh 1,000 from? I told them that I am a Kenyan. They said, “But how can we prove you are a Kenyan? Even the refugees speak English.” I told them I could speak the national language, Kiswahili and had documents to show that I worked for the Electoral Commission. I gave them two hundred shillings for them to let me free. And it was before many police officers and even the CID. I want the constitution to stop that kind of harassment.

Com. Kabira: Where was this?

Amina Siyat: Next to Garissa. Between Garissa and Dadaab. It was a Sunday, so that meant I would have spent the night in the police cell waiting to be taken to court on Monday. I just gave them two hundred shillings. And it was neither the first time nor the second time I was doing that. Whenever I am in town and maybe going to a hotel to take supper, there is usually a place in the backstreets where they stay waiting. You have to give them money. I swear to God, they don’t understand any other language, only money.

Com. Kabira: I thank you all.

Remarks

This ‘women only’ session gave women of Fafi a chance to speak on issues that were deeply personal to them, issues close to their hearts. Their perspectives on marriage, polygamy e.t.c. could be seen clearly.. These include: marriage and child bearing and the place of the woman who is barren; desire for freedom to make decisions on divorce and marriage; freedom for women to marry; women and issues of inheritance; widowhood; neglect within marriage; low status of women within marriage; poverty; education; provision of basic needs; woman and Islam, or interpretative of the same; equality issues; access to and control of property; women’s representation; corruption; security; Islamic law and status of women.

In Mandera East Constituency where we were on 3.6.2002 at a very well attended meeting, a number of women gave their views.

Bishara Ali Hirsi, the Chairlady of Maendeleo Ya Wanawake, was among them and on behalf of the women, she wanted: Muslim women to be provided with prayer mats; access to security; water, health services, and food; women’s representation in parliament and local authorities to be 30 per cent; all nominations to parliament and local authorities to go to women; rapists to be given death penalty; rape cases to be handled by Kadhis Courts; issues of succession to be adhered to; no discrimination at work places; a quota system for women to be in the constitution; and

North Eastern Province to be treated like all other provinces and not be discriminated against.

Fatuma Abrahims on her part wanted: police to respect Kenyans; protect the borders; support women who have become breadwinners; and women's representation in all areas of decision making to be guaranteed.

Abida Hassan wanted: Kadhis Courts to be given all facilities like those given to magistrate's courts; all family and inheritance matters to go to Kadhis courts; and any man who divorces a woman to pay for all the needs of the children.

Bundumba Marow expressed similar sentiments.

Councillor Kalime Ibrahim wanted: Compensation to the people of North Eastern for the atrocities they have suffered; the rich and the government to stop exploiting the poor and to stop land grabbing in Mandera.

Fatuma Mohammed Mohamud wanted women's rights to be guaranteed; women to be treated like Kenyans and police to stop harassing people.

Binta Bulow Mohammed, who is a woman leader, wanted: Islam to be given the respect it deserves; Muslim women to be given their rights when they are divorced; women not to be locked out of employment.

Halima Adoro Malishe wanted everybody to be free and women's rights to be guaranteed.

Najura Othowai wanted the constitution to promote girls' education, provide for 30 per cent women representative; rapists to be imprisoned; have a right to give citizenship to their children, Affirmative Action for women; basic needs of water, health, security, and free education for all.

At the same meeting, men were very clear about what the constitution needed to do for the people of North Eastern. Like many other Kenyans, issues of the powers of the president, security, judiciary, corruption, land grabbing, human rights, etc. were raised. But like other presentations from North Eastern Province, Sheikh Ibrahim Abdi Kadir Adan, Hani Hasan (Councillor) Gaman Hasan Amin, Mohammed A. Khalif, Khalif Mohammed Sheikh (Chairman of Supkem, Mandera), Shalif Ibrahim, Arale Mohammed Ibrahim, Mohammed Diis Abdulahi, Dijah Abdia, Hassan Hussein Abdi, Kadhi Chairman of Youth Polytechnic in Mandera, Sahara Mohammud, Mohammed Hassan and MP Honourable Shaban Isaak, among others, wanted compensation for all the atrocities committed against people of North Eastern; identification cards to be available for them; compensation for the Wagalla Massacre, Garissa and Garsen massacres; exclusion and discrimination against people of North Eastern to be stopped, protection of common land ownership; reduction of the powers of president; livestock policy; retention of traditional boundaries; increase of the power of the Kadhis Courts; security; no communal punishment for individual crimes, compensation for people for deaths and destruction of property; screen cards to be abolished; government to stop

excluding North Eastern; pastoralist policies to be put in place; Affirmative Action for Northern Eastern; basic needs; the Indemnity Act to be addressed; and establishment of the Truth, Justice, and Reconciliation Commission.

In Mandera West Constituency where we were on 4-3-2002, at a very well attended hearing in Takaba with the Member of Parliament, Hon. Mohammed Amin, similar issues of compensation were raised: A Truth, Justice, and Reconciliation Commission to be set up; rape of Northern Eastern women by security forces and the killing of young people to be compensated. Other issues were: traditional borders; crimes of Kenyan security forces; reparations; ethnic clashes; boundaries and more others.

Many of the men who attended were elderly, for example, Adam Mohammed Ali (64) Quasi Isaak Alache (68), Habiba Mohammed Osman, (68 years) Alinur Hillow Osman (86) Adow Mohammed (70 years).

A number of women gave the presentation. A 60 year old woman, Hawa Ali had this to say: "Security forces have raped our women and killed our young men calling them shiftas." Hawa narrated how she was arrested while seven months pregnant and taken to Mandera. She lost her baby in the process. She wanted the constitution to address poverty, insecurity, water and markets for their goods. On her part, Halima Isaak Hache said: "The Kenya security forces have been very hostile to the people of this province. I was tortured by them. They killed my husband and my four children. They have killed our youth and raped many women in this place. Security forces have been terrorizing the people, torturing them, killing them, raping the women and girls."

Habiba Mohammed Osman, a 68 years old woman said she was raped when she was a young girl. This was done by security forces. She still has problems passing urine. No one has ever thought about compensating them. On her part, Halima Siras confirms the story of the two women. She said, "Many in my family were killed by security forces." She wanted the constitution to address: insecurity, poverty, water, sharia law, bad governance and free education, among other things. At the same meeting, many wanted Affirmative Action for North Eastern Province, Affirmative Action for women representatives; women's rights on rape and torture; among other things.

At the same sitting, Mohammed Noor Mady G. Marker of 3Cs wanted the tribal boundaries to be respected; to have the question of internally displaced persons (IDPs) addressed, to deal with the GARE community problem, and abolish provincial administration while establishing a Truth and Reconciliation Commission. Others like Hassan Ibrahim (56 years) were bitter about the past and wanted the people to be compensated: "I have no children," he stated, "my wife ran away because I was not a man anymore and could not have children because I was castrated by the Kenya security forces in 1981." Him and Bashow Dakat, Abdow Allow (40years); Mohammed Ibrahim Maalim (42

years); Kerrow Sheikh Mohammed; Abdulahi Haji Hussain (30 years); Ali Kalale (77 years); Abdi Maalim Isaak (23 years); Adan Mohammed Ali (60 years); Abdi Ahman Kassim Jirraw (48 years); Ahmed Mohammed Alike (43 years); Hassan Mohammed Abdi; Abdulahi Sheikh Ahmed (64 years); Ali Isaak Hassan (34 years); Abdi Hukai Guracha (44 years); Hussein Nurrow (28 years); and Isaak Abdulahi Tali (34), among others, were agreed on the fact that the people of North Eastern Province had been excluded from mainstream development. They had been discriminated against; they needed to be compensated for historical injustices. They also wanted Islam to be respected as a true religion; Kadhis Courts to be at the same level as those of the other courts and collective punishment for people of Northern Kenya to be stopped for they had stayed "*kama Swara*" (like gazelles).

Section Summary

In this vast province, there was a deep sense of alienation, exclusion and isolation of both men and women. The people there felt that as a community, they were targeted for discrimination because they were Somalis. The Kenyan forces, they said, had raped their women. Men cried as they recounted the Wagalla and other massacres by the Kenyan army. They remembered those who were responsible for the massacre by name. They wanted freedom from a government that had colonised them. They wanted peace in their region. Peace for them was the most important thing. They also said that hospitals had no drugs and no doctors—they were a mockery to them and so they wanted them closed. They said 10 per cent of the national revenue should go to North Eastern; wanted corrupt police officers to be removed; that there were very few judges from North Eastern Province, they needed marketing centres and research centres, and that the Chief Kadhis should preach peace and settle disputes.

A history of torture, of pain, of rape, of crimes by security forces, lack of respect for boundaries and issues of compensation were raised among other issues. The people here felt they had been treated like children of a lesser god. They expressed the feelings that they were outsiders or intruders; their rights as human beings, as Kenyans had been violated for too long. They wondered: would this constitution do anything to bring back dignity, respect, peace and liberty for the people of Northern Kenya? That was the question on the lips of many of them.

Thus, pertinent issues in North Eastern Province, were:

- Historical injustices, illustrated with details of what they saw as isolation, poverty and lack of government focus on development of the region;
- Collective punishment illustrated with the various massacres e.g. Wagalla massacre ('if one has sinned all have sinned' mentality);
- Security, where the government was seen as the aggressor;
- Alienation;
- Marginalisation;
- Need for a Truth and Justice Commission;
- Compensation.

Section 4: Voices from Nairobi Province

(Nairobi County)

Introduction

Nairobi City and County is our capital city where the seat of government that we want to be accountable to us sits. It is where policies are directed from, but it is also the place where demonstrations demanding a new constitutional dispensation were held. Nairobi is the home of many who keep the government on its toes; civil society organisations, trade unions, opposition parties and individuals who chain themselves as a symbol of resistance. It is a land of people who often speak in one voice although they are of different tongues. It is where the nation comes together to celebrate or to mourn tragedies such as 1998 bombings. It is in Nairobi where we sang *we are unbwogable* (can't be intimidated) and *yote yawezekana bila Moi* (everything is possible without Moi), and where the process of the review started. It is our capital, sometimes the heart beat of our nation. Here, we celebrate our diversity too. It is the land of the affluent who live in Muthaiga, Lavington, Muthangari, Westlands, Runda, and Loresho, among other areas, but also the home of many poor Kenyans who have migrated from rural homes running away from poverty to seek better lives for themselves and their families. It is the home of the tallest buildings and also the home of the biggest slums like Kibera, Korogocho, Mukuru kwa Njenga, Fuata Nyayo, Kariobangi, Kawangware, Kangemi, Eastlands and many others not so habitable dwellings. It is also the home of those not so poor and not so rich who dwell in areas such as Buru Buru, South B, Mugoya, part of Langata.

In Nairobi Province, the City Hall and the Commission Headquarters located at the Kenya Commercial Bank building in particular, were beehives of activities during the whole process of the constitutional review.

The Commission organised special hearings in the capital city. Religious groups presented their views. Most of the women's organisations presented their views with a focus on what is now known as *women's minimum agenda*. In this section, however, we concentrate on women's presentations at the constituency level.

Presentations

Westlands Constituency: at the Harvest Centre Fellowship in Kangemi on 28th May 2010

Teresia Amina wanted the constitution to ensure they had water, children's rights were protected, women to be economically empowered, all to have food and shelter, and to have free education.

Lilian Adhiambo wanted the constitution to ensure civic education on people's rights, enhance adult literacy, and Kenya to have two national languages. In addition, Lilian wanted the president not to be above the law; boys and girls to be entitled to land inheritance and husband and wife to share property equally.

Eva Maloba wanted free education, free medical care and price control. She also wanted presidential terms to be reduced to two terms; his powers to be reduced, and everyone to get a small piece of land. In addition, Eva wanted more women in parliament and other leadership positions. She also wanted boys and girls to inherit property equally and matrimonial property to be equally shared by wife and husband.

Mercy Mukabwa wanted girls to inherit property from their parents, while Mary Osinde wanted to have employment without discrimination on the basis of tribe.

Philemon Ochieng on his part wanted the constitution to address corruption, ethnicity and employment.

Makadara Constituency: Public hearings held at Mbotela Social Hall on Wednesday, May 29th 2002

Teresia Gitonga wanted party nominations before the general election to be done on the same day, while Veronicah of the South B's Our Lady of Visitation Church, wanted us to take care of those in the slums so that their situation could improve and the hawkers who were being chased like thieves to be settled. She added: "Everyone should do only one job. There are many people who are working on two jobs, three, four, and five. He is the informer, the clerk and another person. Everyone should be able to own property anywhere in Kenya and should not be discriminated against even a little.

Wairimu Mungai wanted maternity leave to be included in the law. "I will talk a little bit about the Executive. For sure, we have talked a lot but we see a lot of problems. It is because this power balance is not OK. It is evident from the constitution that the president of this country has a lot of powers. Everything is not going right because there is no transparency. So I would suggest the executive powers be balanced." Wairimu also wanted resources distributed equally and Kenyans to be able to buy land anywhere in the country; also basic needs of water and health.

On education, she said: "This country cannot prosper without education. And if women don't get educated and we are half the population, the country will not prosper. Adult education needs to be re-introduced for those who are not educated. It should be called 'Development

Education’ and then everybody would know how to read and write. We should promote the freedom of the media also.”

Veronica Cecilia Wangui from South B’s Our Lady of Visitation Church wanted children’s rights, poverty and employment to be addressed in the constitution.

Bertha Ouma, a member of the Women’s Political Caucus, presented issues on gender equity in land distribution, basic rights i.e. social, economic and cultural rights, right to life, free and compulsory education, right to employment, citizenship, children’s rights, office for children, legislature, Affirmative Action for the marginalised, disabled, 50 per cent Affirmative Action for women, and establishment of a supreme court with at least 9 (nine) judges.

Betty Moraa wanted women to be consulted when their representatives were being nominated to important positions. In her view, women should be given the power to decide who should be appointed to positions of leadership. She said, “Those who are not appointed by women end up doing their own things and are not accountable to women.” She also wanted the constitution to address: water, school, good housing, hospitals, street children and food.

Other women in Makadara constituency wanted assistance for persons with disabilities, electoral process to be addressed; sharing of resources, which is also related to poverty in Nairobi where the gap between the poor and the rich is unparalleled; land, retrenchment, security, reduction of presidential powers, women’s rights, harmful cultural practices, corruption, dual citizenship and good governance.

Embakasi Constituency: Public hearings at Mukuru Community Centre (Mukuru Kwa Njenga) on May 29th 2002

Mary Auma wanted: a ceremonial President and a Prime Minister, the Affirmative Action for women and at least forty percent of members of parliament to be women. Also, she wanted political, social and human rights, free primary education for both boys and girls, wife inheritance to stop, removal of negative cultural practices, and the right to inherit land and other property by wives and girls.

Stella Kimeu: wanted education for the children, assistance to the disabled children and domestic violence to be curbed. “You see, even if a woman’s teeth have been broken, or she has been beheaded, no action is taken against the culprit. Even if he is jailed, after two years, you will see him free.”

Fatuma Ali wanted hospitals and free education.

Joyce Wachira presented a memorandum from women’s organisations in Embakasi. The main concerns were: access to and ownership of the land

for women; cultural practices that limit women's access, and control of land to be reviewed and discouraged so as to achieve maximum food productivity and security. Also, Affirmative Action to be adopted to ensure at least 30 per cent representations of women at all levels of decision making including those relating to land e.g. the local committees, land boards, tribunals and commissions dealing with the land, equal protection of the law, to avoid discrimination; and freedom of expression and association. In addition, the women of Embakasi wanted dual citizenship and both men and women to be able to confer citizenship to their children and spouses.

Rose Kulo, Chairlady of Bidii Women Group was concerned that women were denied their rights and often they were being misused by singing and dancing for leaders and welcome them to the podium but were not involved in development initiatives that took place, neither were they given information. She wanted women's organisations and other civil society organisations to have offices at the grassroots level so that women could access them. She also wanted poor women to be given their rights in determining their own lives. She concluded by emphasising that she wanted the constitution to address education, corruption and street children.

Madina Isa, Chairlady Maridadi Women Group, presented views by Mukuru Village Women Group who wanted better health, sanitation and employment. She also observed that women were squatters in the slums and that their leaders were not interested in leading people who have nothing. She therefore wanted the constitution to address the problem of squatters. She addressed the issues of lack of employment and corruption and she wanted the constitution to address them

Dagoretti Constituency: Public hearings held at the Kenya Science Teachers' College on May 28th 2002

Those conducting the hearings were: Commissioners Domiziano Ratanya, Mutakha Kangu and Pastor Z. Ayonga. They were assisted by Peter Kanyi, Lillian Momanyi, Jacqueline Nyumoo and Eunice Kasisi. The women presented their views and the following had this to say:-

Mrs. Wachira: That she represented the Presbyterian Church of East Africa's Council of Milimani composed of: Karen Parish, Loresho, Kibera, Kangemi, Riruta, Nairobi West, Langata, Amoretti and St. Andrews Parish. She highlighted the issues as follows: appointments in the Judiciary to be based on integrity and qualification; liberalisation of the economy to be done; prosecution of offenders; President's tenure to be two terms of five years each and he/she to be a person of integrity, a family man with a wife; women to be considered in public appointments; abortion not to be legalised; homosexuality not to be

legalised in the country; violence against women and rape to be addressed.

Zuhura Wangui from Muslim Sisters Network wanted any child born in Kenya or a child of a Kenyan parent or a child adopted by a Kenyan to be a Kenyan citizen. Judges to speak the national languages, and not to exceed the age of sixty years. “Even the Kadhi and Chief Kadhi should have a Professional Certificate of Law from the university. Certificate holders for Islamic Sharia practitioners should be graduates from the Kenya School of Law and should be proposed by the Young Muslim Association of Kenya, Bilan Muslim of Kenya and the Supreme Council of Kenya Muslims,” she said.

Mary Sembe, who came from a Catholic Church in Dagoretti called *Guadalupe*, wanted the President to have two terms; the MPs to have two terms; Attorney General to be independent (have security of tenure); street children to be looked after; president to be elected on rotational basis; the constitution to be amended by the people and not by parliament.

Mrs. Mathenge, Chairlady of the Women’s Guild, wanted the constitution to address propagation of an upright society to safeguard our society’s morals and abortion, homosexuality and lesbianism, pornographic films, magazines and books, freedom of worship, care and protection of children to be subscribed to the children’s Act; and protection of environment. In addition, she wanted the constitution to address poverty by reviving the economy; 30 per cent Affirmative Action for women; a morally upright president; a better electoral system; and Female Genital Mutilation to be outlawed.

Mrs. Njiraini wanted the President and the Vice President to be elected from the grassroots. She also wanted the constitution to address wife beating, abortion, right to property and the inheritance of widows.

Zuhura Amani wanted the establishment of a constitutional court and corruption, proper qualifications for judges and presidential qualifications to be addressed by the constitution.

Elizabeth Naliaka, who has hearing problems, presented a recommendation from the Nairobi Deaf Women’s Group where they wanted the issues of citizenship, basic rights, free health care for deaf people, interpretation of services, free education for people with disability, employment for the disabled, inclusion of the disabled in decision-making bodies, right to own property for women, harassment and discrimination, Affirmative Action for women and people with disability in areas of politics, accessibility to pooling stations for the disabled, 10 per cent people with disability in the local authority, equal budgeting, family protection and rights, sexual harassment on women with disability to stop, recognition

of sign language as the first language of deaf people, right to land/property inheritance for the girl child, education to the public on people with disabilities to be addressed by the constitution.

Sofia Kikato who presented proposals from the Muslim sisters network wanted the constitution to secure social, political and economic justice for the minority and marginalised groups especially women, equal citizenship rights, establishment of a constitutional court, and an independent judicial service commission; appointment of commissioners and judicial officers to be subjected to Parliamentary approval, Kadhi's court, rights of vulnerable groups such as women, youth and disabled persons to be clearly addressed, rights of all citizens to legal interests and establishment of a constitutional commission.

Kamukunji Constituency on May 29th 2002

Grace Oduor had this to say: "Women should have the right to land ownership and they should also inherit their husband's property in case of death. "You know even a bird rests on a tree." That tree has a place on land. Women need this, and they need to be able to inherit property from their parents as well as from their husbands. A widow should not be forced to choose a partner after the death of her husband, but should be given freedom of choice and association. Our children must also be looked after. The government should make sure that children have access to education; to healthcare; and even clothes and food. They should also inherit their parent's property without being harassed by their relatives.

Stella Kaburia from Our Lady of Mercy Primary School, Special Education Department, who was a teacher for 25 years and was in-charge of the special education wanted education to be a basic right for all children. "This right must also include children with disabilities and children of the poor," she said. She also wanted teachers to be well remunerated in their work; the constitution to ensure employment for all including promoting the *jua kali* (informal) sector. In addition, Stella wanted the constitution to address issues of corruption, security, police force, health care, ensure cheques and balances, among other issues.

Karen Odero, also from our lady of Mercy, wanted the constitution to address basic rights, fundamental rights of Kenyans e.g. freedom of worship, freedom of association with any political party. Karen wanted death penalty not to be abolished because of the extent of crime such as serious cases of rape and child defilement; and characters involved in such crimes be given capital punishment. She didn't want the constitution to allow a lot of freedom to criminals. In addition, she wanted the Constitution to consider the poor and guarantee all the workers the right to trade union representation. Karen wanted issues of inheritance to be addressed by the constitution.

Mary Isangari did not want life of Parliament to be extended, whether the Ghai review of the constitution was concluded or not. She wanted Kenyans to go for elections and move forward.

Rose Murage, a teacher at Aquinas High School, wanted women's rights to be guaranteed in the Constitution. In addition, she wanted decentralisation of power, freedom of movement, protection of persons with disabilities, employment, protection of the unborn, protection of children's rights, punishment for those who defile young girls, rape women and girls, child labour to be addressed, freedom to adopt children, humane way of retrenching people and protection of the elderly. It was her view that presidential powers should be reduced and that the president should remain commander in chief of the armed forces. Also, cabinet ministers to be appointed from elected MPs or from parties.

Anne Obwara, who is a teacher, wanted children to be disciplined, free basic compulsory education for all including children with disabilities, protection of cultural, ethnic and regional communal rights. Improvement of judicial system and the legal rights, protection of our culture, review of citizenship and immigration laws; Affirmative Action especially on women. She wanted political parties not to be funded by political funds. On land and property rights, she wanted the constitution to determine a ceiling as to how much land a person could own in Kenya. She wanted members of parliament to be of high moral integrity.

Christine Lugadilu wanted the constitution to address factors that promote national unity, including equal distribution of resources, employment, protection from the police, equality of men and women, women's representation in Parliament, inheritance, and removal of harmful traditional practices.

Jane J. Betty wanted the constitution to address basic rights of the child, decent houses for the police and increment of their salary.

Redempta Mwanaongoro wanted the government to sponsor parallel degree programmes, women's rights, protection of widows and children. She also wanted everyone to get their ID when they reach the age 18.

Kasarani Constituency on May 28th 2002

Julia Wanjohi had this to say: "I have come to say what our problems as women are. We have no place where we can sell vegetables; we want the City Council to show us where we can do this business. In the rural areas, there is no Uhuru. I come to Nairobi, and there is no Uhuru, where should I go? When I go to hospital, there are no drugs. Give us drugs and education for our children."

Julia Wanjiru wanted the following issues to be addressed; market for hawkers, and illicit brews.

Beatrice Wambui wanted the constitution to address the issues of corruption, market for the farm produce, affordable medical care, a ban on illicit brews, and to have free education.

Mary Wanjiku Manyara wanted the constitution to address issues of justice and fairness to all, poverty, bursary funds for the bright but needy children, and free medical care.

Martha Kotikash wanted the headquarters of parastatals e.g. the sugar authority, coffee authority, to be set at those regions growing them, employment for the youth, and local and foreign investments to be encouraged.

Mary Kibe wanted parastatal chiefs to be elected by individuals and issues of corruption to be addressed.

Section Summary

In Nairobi, the concerns of women in the constituencies the author visited namely: Makadara, Dagoretti, Kasarani, Westlands, Kamukunji and Embakasi can be summarised as:

Education – free education for boys and girls was a top priority. We need to take into consideration the fact that those who came to constituency hearings in Nairobi were mainly the urban poor. Thus, issues of food, shelter, health, street children, inheritance issues, women's representation and Affirmative Action were a priority. And as in many other parts of the country, women in Nairobi were also concerned with the issues of inheritance for women and girls, access to and control of resources, land issues, citizenship, gender based violence, Affirmative Action for women, and the powers of the president that needed to be reduced, among other issues.

However, it is important to note that apart from the constituency hearings in Nairobi many women's organisations presented their views in other venues in Nairobi along with many of the elite population e.g. trade unions, the private sector, business people, religious organisations and political analysts, who presented their views as organised groups. Some of these views are reflected in Chapter 5 of this book.

There were many men who presented their views on government structures, representation, powers of the president, and devolution of power, among other issues.

Section 5: Voices from Rift Valley Province

(Turkana, West Pokot, Samburu, Trans Nzoia, Uasin Gishu, Elgeyo/ Marakwet, Nandi, Baringo, Laikipia, Nakuru, Narok, Kajiado, Kericho and Bomet Counties)

Introduction

We were also in the land of Koitalel, the Great Rift Valley. Koitalel is the gallant Kalenjin leader who used all his power to keep the white man from colonizing Kenya. The story goes that the colonialists shot him after trickery. Bomet in the heart of the Rift Valley, the country's food basket, is also the land of Kauria, the great peace maker among the Kipsigis people who consider themselves the "Royalty of the Kalenjin people". During one of the hearing sessions, we passed through Bomet Town and drove through narrow murram roads where one could tell the land had been used until it was exhausted; the maize was no longer the tall green sweet maize with two or three maize cobs ready to be enjoyed by the farmer, her children and community. The maize looked tired and had flowered before its age in the same way a fifteen year old girl becomes a mother before she is ripe, as women in the area say. It is Lema Elieshi the Tanzania writer in her novel *Parched Earth*, who says,

"The Earth is so willing to be used, so willing to give freely, over and over until it is completely exhausted" (Elieshi, 2001).

That is what you feel as you walk through overused pieces of land in Bomet, Bureti, Sotik, Burabu, Molo, many other places in the Rift valley, Central province, Eastern, Western and in Kisii land where every inch of the soil seems to have given all that it could. It appears that as we drove to the place where we collected the views in the hinterland of the Kipsigis people in Bomet, the land was instinctively an ally of the woman. Like women from Central Province, Western province, Eastern Province, Coast Province – the homes of the Giriama and Duruma people – the Kisiis, the Meru women, the Mbeere, the Kambas, the Luo, the Luhyas etc., all those women in Kenya who till the land, the Bomet women have a link with the land. They are at home with the soil. They nurture it the way they nurture their children. As we walked on the paths to reach the wooden, *mabati* (iron sheets) church in the hinterland of Bomet, the peasant women who seemed to have sworn loyalty to the soil, to mother earth had to have their say also. And like the other women of the great Rift Valley, of Keiyo South, of Keiyo North, of Sabaoti, of Belgut, of Sotik to the North Rift with the Pokots, West Pokot and the Maasai lands of Narok and Kajiado, women spoke.

Retired Major General Kipsirim Aruasa, from the Kipsigis community, tells me that the Kipsigis are the "royalty of the Kalenjin people". He tells me that his great, great grand father whose name was Kauria was a great peace maker. He believed in negotiations, in inter-clan consultations and would never

encourage the Kipsigis to go to war unless there was no other alternative. To me, they sounded like the people of Umuofia, the Ibo people of Nigeria—Achebe reminds us that they would not go to war unless it was a just war. Ezeulu, the chief priest of Ulu of *Arrow of God* reminds his people of this. During the post-election violence, Major Gen. (Rtd) Aruasa regretted that our communities all over the country have been reduced to following politics of ethnic hatred and have turned against each other. He was sad that it was possible for Kenyans to fight in unholy wars. He lamented that poverty, politics of competition and hatred had brought Kenyan people this low. However, he says, as a great grandson of Kauria, the peace maker, and those of his house and the Kauria clan, he would always preach peace.

I shared an amazing story with Major General (Rtd) Kipsirma Aruasa. This was the story of an old man at Kapsurur in Belgut Constituency who had listened to many presenters wanting the land leases to be reviewed so that no individual or company could own land for more than 100 years. Many wanted to retain the 99 year land leases while others wanted them reduced, but the main thrust was to scrap the prevailing 999 years leases. If you go to Kericho and watch the thousands of acres of land owned by individuals and tea companies, where the local people are just workers and not owners of the land or the tea, you will understand this concern. Where the local people have tiny pieces of land, raging from landlessness to half an acre, to one acre or two for many of the peasant farmers, then you would understand their concerns.

The Mzee, after listening to many of the people talking, stood and had this to say:

“We are Kipsigis people, we honour our agreements. If we gave these land owners 999 years, we are under obligation to wait until those years are over. We don't break promises that we have made. It is our tradition. When the 999 years are over, we can then give shorter leases or take back our land.”(Author's notes).

The rest of the people looked at the Mzee, both in wonder and with admiration. Prof. Idha Salim re-confirmed with the Mzee that he meant that, we wait for 999 years to expire. The Mzee confirmed, “Yes, a promise is a promise.”

When I told this story to my friend General Aruasa, he agreed that the Kipsigis people had their own values, their traditions that guided them. They were peace makers too like his great, great grand father, Kauria. They were people you could rely on. “The Mzee was right,” said General Arussa, “we keep our promises.”

In Pokot land you think about the women there and sometimes you want to weep. You want to weep for the mothers of daughters and sons who have never had peace in their lives. You would think that this statement is coming from a cold indifferent history book where you read about tribal wars in distant

lands. I never knew that women among the Pokot live in perpetual fear for their children, both young men and women until the CKRC went to Pokot to collect the community's views on the Constitution.

Thinking of these women in Pokot makes me remember an incident when in Northern Kenya, we, the Commissioners once went for dinner in the Army Barracks. As we sat there enjoying ourselves, one of the soldiers told us about his escapades in Pokot District while pursuing cattle rustlers. He was in high spirits as he narrated how one of the soldiers was killed by the Pokots and how the rest went on a mission of revenge. He was full of contentment as he explained:-

“There is nothing we did not do. The women and girls, all knew we are men. The men, young and old were shivering with fear.”

He then laughed out loud and gulped the beer and belched as he said: “I like remembering that time.”

We looked at the man in disbelief and wondered whether we were in an appropriate place. We felt like traitors. Nancy Baraza, who was sitting next to me, looked at me and said, “Wanjiku, what are we doing here? Do you hear the talk?” We now go back to listen to the views the people of Koitalel and all those other communities whose home is Rift Valley.

Presentations

We had hearings at Kapenguria, Keiyo South, Keiyo North, Saboti, Belgut, Eldoret East, Eldoret North, Eldoret South Constituencies.

Saboti Constituency Kitale Town – Museum Hall on July 1st 2002

At this meeting, there were many women who spoke. U capture their voices in summary.

Susan Naliaka wanted: chiefs to only serve for a term of five years, just like the members of parliament; voters to have the right of recall; and members of parliament to come from all ethnic communities.

Rose Obonyo (from Catholic Justice and Peace Women Programme) presented a memorandum for the women of Trans-Nzoia. The women wanted cultural obstacles to women advancement removed; property rights for women's rights of the child, Electoral process that facilitates women's representation and women in leadership. This memorandum was prepared by women representatives at the District Delegate Conference of 300 delegates held at St. Phillip Catholic Church, to examine, correct and prepare the memorandum. The representatives were from:

- a) Catholic Justice and Peace Commission Kitale;
- b) NCK through regional Director Mr. Masengeli;

- c) Muslims;
- d) Organisations of disabled persons; and
- e) 3Cs members and other women.

The document, she said, reflected the views of the grassroots women in Trans-Nzoia District. "We ask that commissioners and the public treat our submissions with respect and openness," added Susan Naliaka.

Justina Sitti wanted: Opportunities for genuine democratic space. She said what was in place were governing structures that were domineering, patronising and insensitive to women. Good governance, public finance, succession and transfer of power, citizenship and elections to be addressed. She also wanted women's participation in legislative and local authorities; entrenchment of the principal of Affirmative Action by repealing Section 33 of the Constitution and access to resources for the marginalised groups and women. In addition, she wanted checks and balances in governance and reduction of the powers of the president, separation of powers of various organs of the state; elimination of all forms of discrimination of gender in recruitment; appointment and training; property and land rights for women. She added that there was need to institutionalise a land commission in the constitution that had equal representation of women and men; recognition of CEDAW, equal access to land and other resources for men and women; protection of inheritance rights of both widows and widowers; girls, also for people with disabilities and orphans; protection of forests and all natural resources; guarantee of security; equal protection by the law to both men and women, recognition of the diverse groups in Kenya; Affirmative Action for 30 per cent women's representation in all decision making positions; devolution of power and the gender commission to be put in place.

Miriam Grace Nabucha wanted: Both men and women to have access to land and the issue of squatters to be addressed, "Why should wild animals have Game Reserves and Game Parks when a Kenyan is called a squatter?" she asked. She also wanted 30 per cent women's representation in leadership positions and no political tourists (meaning influencing voter choices).

Mary Nyambane wanted: All Kenyans to have the right to information, independent candidates to be allowed to vie for all the seats, candidates to declare their wealth in order to qualify to vying for seats; political parties involved in violence before, during or after election, to be barred from nominating candidates from that particular constituency for at least two terms; Electoral Commission to be given the mandate to prosecute such parties; Affirmative Action of 30 per cent for women in parliament;

and lastly, rapists and defilers to be punished by castration or life imprisonment.

Nancy Iyadi wanted: Members of parliament or people in power to develop listening skills.

Asanya Ben Asanya wanted: Boys to inherit land and girls to get other property.

Dominic Masinde wanted: Rapists to be jailed.

Martin Kubasy wanted: Women to have access to land, defilers to be castrated.

Okoth Batholomeo of Catholic Justice and Peace: Did not want women and men to have equal access to land and that girls should not own land.

Kapsuser in Belgut on 16.7.2002

Edna Sigei (came with a memorandum of women groups that she chaired). The women of her group wanted: Anyone born of a Kenyan parent to automatically be a Kenyan; free education for their children, security, health, water, husband and wife to jointly own their land titles, rights of marginalised groups to be addressed, Affirmative Action in favour of women; political parties to take women into consideration; all seats for nomination in parliament and local authorities to be given to women and those with disabilities, one third of the seats to be for women, mayors to be elected directly, a gender commission; and girls to inherit land.

Councillor Florence Koskei, National Council of Women of Kenya, who spoke on behalf of the women submitted that: A child born of a Kenya citizen should automatically be a Kenya citizen; Parliament should have 35 per cent of women through Affirmative Action; the president should not have a constituency, that his/her constituency should be Kenya; police should deal with rape, child abuse and domestic violence; women and girls to be protected from domestic violence; education to be free and compulsory; abolition of all discrimination and negative cultural practices; creation of gender and women affairs ministry; land titles to be written in the name of both spouses; and 35 per cent of the seats in parliament and local authority to be for women.

Mary Korir wanted: Women's rights, devolution of power to local authorities, participatory democracy; every presidential aspirant to have a running mate of the opposite gender; inheritance rights for women and girls; Affirmative Action for marginalised areas; and equitable allocation of resources.

Nelly Langat, Chair of Kakele Women Group said that: Women should have their rights; husbands and wives should have title deeds in joint names; domestic violence must be dealt with; sons and unmarried daughters should inherit land from their parents; and children's rights to be protected.

Rebecca Chirchir (who also represented Women's Group from Cheplosile) said: That the parents of the young men who impregnate school girls should look after the baby; *majimbo* system to be established; chiefs to be democratic and not dictators, title deeds to have both the husband and wife's name and Affirmative Action for women.

Eldoret South at Kesses Secondary School on 2.7.2002

Regina Boit, a 37-year-old woman from Kesses Women's Group wanted: Kenyan men and women to have equal capacity to confer citizenship to their children and spouses, customary marriages to be recognised by law, come-we-stay marriage to be abolished; title deeds to be in the names of husband and wife; land to be shared equally between parents, daughters and sons; fathers should support their children born out of wedlock; those who defile women, girls and even boys to be jailed for life; women and girls to be protected from sexual violence; and Affirmative Action of 35 per cent seats in all decision making positions for women.

Eldoret North Constituency at Kanyet ACK Church on 28-6-2002

Many women came to give their views.

Beatrice Cherono wanted: Women's rights to be addressed; both men and women to be able to confer citizenship to their children; the principle of gender equality in inheritance and control of resources; social security for all; protection of women and children from all forms of violence including domestic violence, child abuse, rape, incest, wife beating, sexual abuse; maternity leave for 90 days, Affirmative Action for women's representation, 35 per cent women's participation in political party leadership; basic needs of water, food, health, security, education; and persons with disabilities to be assisted.

Elizabeth Barno wanted: women to be able to be independent; represented in parliament and to be protected; Affiliation Act to be brought back; and reduction of powers of the president.

Adija Fatuma Sitienei wanted: Women not to be cheated out of their property; no domestic violence; children to know their traditions; women to have at least 50 per cent seats in parliament and 50 per cent of their family property. Drinking of alcohol to be allocated one day only.

Martha Rop, who is a woman leader and who would later become a delegate at the Bomas Conference, a woman of courage and commitment wanted: chiefs to be educated, village elders to be paid; women to be 50 per cent among chiefs and sub-chiefs; rapists to be jailed for life or killed; women to be protected from all forms of violence, rape and beatings; a third women's representation in parliament through Affirmative Action; freedom of worship but not devil worship; property of widows to be protected; a gender commission to be established; girls to be 18 and

above before they marry; women to have title deeds; and the president not to be above the law.

Truphena Sang who has 15 children wanted: Employment for the youth, no bribe for police and APs and bursaries for poor children.

Hadija Taalam wanted: Women to be protected because, “When you disagree and go to the chiefs and elders, they don’t listen to you. They are also men. We should therefore have women among the village elders.” Also, affordable health services and free education.

Eldoret East Constituency at Moiben Secondary School on 3-7-2002

Many women spoke.

Helen Yego from the Anglican Church of Kenya wanted: Dual citizenship; federal system of governance; reduced powers of the president; moral and ethical criteria for election of MPs and councillors; basic needs—water, food, health, education, employment, security; women, people with disabilities and other vulnerable groups to be included in decision making bodies. She also wanted gender balance in all appointments of commissions and other institutions; a fund to support women candidates; equal access to resources; women’s rights to be implemented, Affirmative Action for women in all institutions; and 30 per cent women’s representation in all institutions

Alice Cheluget from Moiben Upper Primary School wanted: Free primary education; bursary for deserving students; girls to be given equal rights; female genital mutilation to be banned; and free medical care.

Jane Nyamboa wanted: Squatters to be given land; the poor to be able to talk to the president; poor farmers to be assisted; women to inherit land and have equal access to their family property just like men and all children; boys and girls to be able to inherit their parents’ property.

Esther Mwenje wanted: Young men who are making girls pregnant and leaving them to take responsibility; women to be protected from male violence.

Gladys Arwa wanted: The constitution to deal with poverty.

Anaclea Sang wanted: All property to be registered in the names of husband and wife; property acquired by the husband with the first wife to be shared with the other wives; all men who make girls pregnant to be forced to marry them; women to have at least a third representation in parliament; and direct election of the mayors.

Ruth Kemboi of KFA Uasin Gishu wanted: A gender commission; review of family law; ownership of marital property by women; equal opportunities in employment; local authorities to have 45 per cent of the national budget; and negative traditional practices to be gotten rid off.

At the same meeting, many men presented including:

Jonah K. Kibet who addressed issues of: Citizenship; systems of government; qualifications of MPs; right of recall; MPs salaries; election of mayors; and devolution of powers among others. In addition, Kibet wanted women to be represented in parliament and in the local authorities.

Richard Kirwa wanted: Chiefs to be elected, village elders to be paid.

Joseph Kimeli, James Arap Togom, Christopher Mitei, Francis Komen, Daniel Buseinei, James Malakwen, and Kanu Chairman Eldoret East constituency and former MP, Mr Joel Barmai addressed issues of structure of government; Prime Minister; political parties; devolution of powers; local government; and basic needs, among others.

Kapenguria in Mtalo Municipal Hall on 27.6.2002

This is where Jomo Kenyatta and others had been detained by colonialists. We listened to the Pokots. I was with Prof. Salim, a man whose sensitivity to the Kenyan people and their diversity is unparalleled; also whose patience and interest in capturing not only the words but the spirit and emotion of the people is enviable. Prof. Salim sat in the Hall and I sat outside. The women sat on the grass while men sat on chairs in the hall. Most of the women were from the Sengwer community. The women did not feel free to sit in the hall with the men. So, we created the opportunity for them to be listened to by me as Prof. Salim was listening to the men in the hall.

Session for Women of the Sengwer Community in Kapenguria 27.6.2002

Com. Wanjiku: We shall begin when you are ready.

Maria Kimayo: Ok, women have you heard that? Do not hide anything—from domestic issues to everything you want to say. I know you were afraid to speak inside there because your brothers-in-law are there or your husbands too and you were worried what they might say to you in the evening or whether they might beat you. But now you can speak. Who is ready? Let me start you off:

I am grateful for this opportunity. As the Sengwer, we have been oppressed in many ways; the first being that we don't have a district. The second thing is that since 1963, the Sengwer community has never been represented in anything. Not even in the Maendeleo ya Wanawake or any other development project. The other thing is that we educate our children but they fail to get jobs. If there is work in West Pokot, we take those of our well educated children there but they do not get the jobs. We go back home with them. When we go to Trans Nzoia, it is the same thing. The same thing in Elgeyo Marakwet. What I want you to do is help us get a district. We the women are also saying that many of our

children have been killed through cattle rustling but no one has been arrested by the government. It is like we do not matter.

Then we, the women of Sengwer, have given birth to many children – you have said that we can talk even about domestic issues – but we see that our husbands are leaving us because we have many children. So it becomes very hard for us to take care of those children, looking for food and educating them. But we don't have anything with which to take these children to school because even the cattle have been stolen.

Com Kabira: What would you want done?

Maria Kimayo: I would want the constitution to help us in that area. It should help us the Sengwer women to be like other people. I also want to add the issue of educating our children. We hear that we are almost becoming like the Maasai in our behaviour. As soon as the girl starts showing signs of growing up, the father forces her to get married. We should help that child to get education. Even those who are out of school should be helped. We could start small projects like tailoring to help them take care of themselves.

Com. Kabira: What about women leaders like in Maendeleo ya Wanawake?

Mary Kimaiyo: Even that is just lost somewhere. There is no way we can get there because you know they are many. If we are chosen from every division, the women from the other side are so many that even when we have elections, it is them that win. You find that we are only three and they are twenty.

Com. Kabira: Are they all from Pokot?

Interjection: Thank you for visiting us, the women of Sengwer. I will talk about children and education, house work, farm work, land, of money for business, among other things. We are not financially well off. If it were possible, we would want to get sponsors to help our children go to school. Every time there is a bursary, we the women of Sengwer don't get that money and our children's names are not even considered. They are told that there is no money. It is us who struggle to educate the children. Can these children who stay at home really be able to sit for examinations? That is our problem as the women of Sengwer. We only want a district and then we will know how to live better lives.

Priscilla Keroka: Our main problem is that we have suffered for a long time. We till our land and take care of cattle so as to take our children to school. But they come at night when we are asleep and steal that cow we have just bought. When our children go after the stolen cattle, they get killed. So we lose the cattle as well as the children.

Interjection: That thing is hurting very many people. Some people are even paralysed. I wish some of them could have come here for you to see

them. For those who were killed, their children are orphans but no one gives them any support.

Priscilla Keroka: Right now, we have children who are in school. Some of them are unable to continue with their education. If there was something to be done to stop these children from dropping out of school like free education, it would have been much better.

Com. Kabira: Any one else?

Veronicah Chebet: As the women of Sengwer community, our major problem is our children dropping out of school. Thieves have made sure that the few cattle that we had are now gone and others are still being stolen. When the young men go out at night to get back the stolen cattle, many get killed. This has made us very poor. We are hungry. I am a parent with five children who are supposed to be in secondary school but right now, they are still at home because I don't have any money. We the women of Sengwer have been forgotten in this community and we would want to be assisted so that we rise to become like other tribes in Kenya. Help us to build schools, help our children get education and help us to get food. Thank you.

Interjection: Is there anyone who wants to say something?

Susan Sara: As the Sengwer community, we have a lot of problems. For example, the problem of Chelangani. We were chased away from that piece of land in Chelangani and the leaders took that land which belonged to the Sengwer people. Even where we are today, our land has been taken away. We have a small piece of land and the other large piece has been grabbed.

Interjection: So what do you want done?

Susan Sara: We want our land back. We are oppressed everywhere.

Interjection: What else would you want?

Susan Sara: We want to go back to live in our farm. But they chased us away claiming it was their land.

Interjection by another speaker: When colonialists left, the government took over the land the President knows that. When the government started distributing land to Kenyans, the president remembered that piece of land in Manchester, Trans Nzoia in Milimani Complex. The government had taken that land in ADC. When it came to giving the land, the president knew that the land belonged to the Sengwer. He gave us the land and everyone was a witness. It was in public. He told the DC to go and give the Manchester land to the people. To give the larger part to the Sengwer people and the smaller part to the Marakwet. He gave the Trans Nzoia Company land which borders this district. He gave out two farms and said they should start with the Milimani one and finish with the

Company land. But up till now, we have not been given the Manchester land. When the people went to see the PC in Nakuru to ask about it, he became very angry. He said that we needed to be jailed and beaten. Even our deputy mayor and some two other women who are not here were put in police cells from morning till evening and were forced to record a statement. They were all held in different cells and the other people were left out. In the evening, their statements were compared and they were found to be the same. So they knew they were telling the truth and they released them to go home. When we got home, we called all the people together. We called our leaders but we only have two leaders. They called all the Sengwer people from Trans Nzoia to Marakwet and the DC together to discuss about that land we were given. But when the DC came, he said, "Get out of this land or I'll call the police to beat you." But the people refused to move. We thought it was a joke. I was also there. The people said they were not going anywhere. That they were going to live on their land even if they were going to make houses from waste papers. Within no time, the DC, together with the DO, brought two lorries full of police who started beating people. There are some women witnesses here who spent the night in Kitale.

Interjection by another commissioner: Did you spend the night in a police cell?

Susan Sara: One month in police cells. Both men and women were arrested, some children too. But some of us managed to run away. Those who were arrested were told to go back to their homes where they had come from and that they would be re-arrested if they went back to that farm according to instructions from the president. So the people said that it would be better to go back to our farm even if they were arrested again. But when we went to court, we lost the case because the judge asked, 'This farm that they are saying is theirs, who gave it to them?' Those who were there said that we had been given by 'the father of the nation' who is the president. And they said, 'If we are wrong, call us the president to come here and decide for himself.' When they heard that, they were afraid. The people were released but they were warned that they would be beaten if they were found near that farm again. That is the day that the PC, DO, other government leaders, and their relatives divided the land amongst themselves. But they do not admit they did that. They say the farm still belongs to the Sengwer. They tell the president that the Sengwer live on that farm. But if the president could get there, he would know the truth and learn not to trust what the leaders tell him.

Julia: I don't have much to say but that as the Sengwer community, we don't have leaders to represent us. Our children are educated but they are not employed and therefore they don't get a chance to be leaders. Those leaders who are well known are not from this community. They don't

even like us and neither do we. I have said what some other woman said that if we will not get a district and our own leaders who will get into parliament and other top leadership positions, then we will not vote. We don't want to continue doing things that only benefit others and not us. We also deserve these seats and to be recognised in what we do. We will have a representative in parliament and that we should have councillors from the Sengwer community as well. We don't want other people who we have welcomed here to lead us. We want the chiefs and sub-chiefs to be from this community. When people from other communities lead us, they tend to favour only their people. They don't give us any chance to say anything and our views cannot even reach the DO because he/she will send us back to the chief. So we would want to vote for chiefs and sub-chiefs in this area.

Monicah Makuti: I am from the Sengwer community. The reason we don't have leaders is that the other people are many and they elect only their people and we are left behind. We want to have our own group for women who will fight for the rights of our people and educate us. We no longer want female genital mutilation. In our community, when a girl is circumcised, the father says he has now gotten wealth and starts to count cows or pieces of land he will receive as girl's dowry. So I say we stop female genital mutilation completely. Because as soon as a girl from Sengwer is circumcised, she is forced to get married. The father wants cows and the girl is forced to go to another man's house. And even if the girl is married and her husband brings cows, the husband's family comes back at night to steal those cows. What good will that do? That is a waste. From fourteen years and above, the father stops to educate that girl. He starts counting her as someone's wife. As long as she has been circumcised, she is someone's wife. Then some men come for her and that is the end of it. This keeps on happening. Since the government started putting pressure on people to stop this practice, people have been doing it secretly. They steal the girl and then get a woman to come and circumcise the girl in the house.

If we could get free education, our children could go very far. The other thing is wife beating. That is a common thing in our community. The law should stop this. Anyone who beats a woman should be jailed. I also want to add the matter of land. When the man sees that you have given birth to many children, he marries another wife and brings her to your land by force. He can even take a piece of that land and sell it to buy another piece of land for the younger wife. And then he takes the only cow you had and takes it as the bride price for that woman or takes it for the younger wife to be milking. Now we would want the law to state that when a girl gets married and her husband is given his piece of land, the title deed should be written in the names of both the husband and the wife then. So that when he marries a second wife, the piece of land will

continue to belong to the first wife. The husband should look for another piece of land and property for the second wife.

Interjection: You take away the woman's house, cow and everything else she owns. My mother was left by her husband and he took away her house. She went to build another house down there and the younger wife became in charge of the major house while my mother was sent to live down there alone.

Remarks

Clearly, the feeling of alienation; of marginalisation of a minority community is reflected here. The need for security, for protection, for recognition and inclusivity of the community is evident. Mothers fear for their children.

There is pain of living in a land where physical security is the priority, of not knowing whether your sixteen year old son will come home from grazing the animals, of not knowing whether the cattle rustlers will come to-morrow or the day after. At this point, you can hardly talk of the "joys of motherhood" you can only talk of the pain of being a mother when you cannot protect your children.

Aldai Youth Polytechnic, in the general hearing with men and women together: Women, among them Sarah Kelel, Juliana Towett, Petronilla Mulile, Esther Towett, Pauline Chelagat, Elsie Rotich and Bridgit Lagat, wanted the constitution to outlaw female genital mutilation; freedom for women to be engaged in economic activities; right of recall of MPs and councillors; title deeds to be in the names of husbands and wives; corruption to be gotten rid of; equal access to inheritance; government to give land to women; and Affirmative Action of 35 per cent for women.

Narok South Constituency public hearings, Mulot Catholic Hall on July 10th 2002

We were at a sitting with women at a hearing session at the border of Narok and Bomet districts. In the Church, where the main hearing was taking place, Commissioner Prof. Salim was listening to the views of the rest of the members of the community while I sat outside with about twenty women. The following were the voices of women at this sitting:

Commissioner Wanjiku: We can start now.

Mary Simat presented the views of more than 50 women from Narok who had prepared a memoranda. They wanted representation in decision making bodies of 50 per cent; federal government or majimbo; to have their own 'Maa Region'; Affirmative Action for women; right to citizenship by both men and women, among others.

Agnes Laboso: I am going to speak my mother tongue and I am going to speak about women. The first thing I want is that the title deed be in the name of the husband as well as the wife. The other thing about the family is that the husband and wife should have a joint account in their names.

In the county councils, women should be nominated so that we have a larger number to represent us as councillors. There should be women in every sector of the government so that they are actively involved in everything that is going on.

About inheritance, the husband or the wife should have the first priority and also the children because they are all next of kin. The property belongs to the family and so everyone in that family is entitled to inherit it.

Com. Wanjiku Kabira: Thank you very much Agnes. Can we have Selina Tanguss?

Selina Tanguss: I will speak in Kalenjin and will talk about women. Women should be given the freedom to do whatever work they want. We know some women are tied at home and prevented from doing the work of their choice.

The second thing is that women should live in peace with their husbands and take care of them. There should be many women groups to assist women access help. Much help comes through these groups and women are able to improve their lives.

Not many women are elected in government and other offices. Because of that, I want many women to be nominated or assisted to get into parliament so that we too are represented. Women should be represented everywhere from the smallest groups to the highest. Even in the school committees, women should be represented. That way, women would get more help. I will not say much. Thank you.

Hellen Koech: I am also going to speak in Kalenjin. About women who don't get married and continue to stay at home, they should inherit their parents' land. Their fathers should ensure that they don't suffer in poverty, because poverty is a major problem in Kenya today.

The other thing is about female genital mutilation. That should be stopped completely. The girls undergo the genital mutilations and then are married off immediately. That way, there is no need for them to continue with their education. The girls are married but later come back home and continue to live in poverty. I feel pain because the girls come back home and don't get married again and only suffer in poverty after so much has been spent on them.

Anna Korir: I am going to talk about women. In my view, it is not right for women to be circumcised. Education should be offered equally to both the boy and the girl child.

The other thing is that women should have the same rights as men to own property and business. Because of the harsh economic conditions, women should have the right to engage in business to be able to improve their lives.

The fourth issue is about the widows. After the death of the husband, the wife should be able to access his benefits like NSSF and the retirement pension. The wife should not be sent or thrown from one office to another and sometimes end up contracting these “modern” diseases when forced to give sexual favours to obtain her benefits. Those were my views.

Mary Vicky: I am going to speak on behalf of women.

Com. Kabira: I don't know whether you are close enough to the microphone or whether you want to hold it.

Mary Vicky: My name is Mary Vicky and I am going to present my proposal on the side of women and the first thing we said is that both genders should have equal rights in terms of inheritance. Men and women should have equal access to land. The constitution should guarantee access to land for everybody. There should be a joint title deed. There should be enough security, no wife beating and so on. Our female children should receive the same education as males. If a female child is not married, she should get the same share in the family as male children and inherit everything.

There should be freedom of movement and freedom to do business everywhere. About widows, the wife should inherit a husband's riches in full. Women should have rights to seek for any seat in leadership. The wife should have a right to elect a leader of her own choice not to be dictated by the husband. Women should be included in leadership, especially in local authorities.

Citizenship should be given to both men and women when it comes to marrying outside the country. Dowry should be abolished for it is the cause of all mistreatment of women by men since they claim they have bought their wives and therefore they are their property.

In the local government, mayors and council chairmen should be elected directly by the people. They should serve the same time as the other councillors. Leaders must be experienced, literate and fair. Regardless of gender, spouses should be regarded as automatic citizens. Children of Kenyan parents should be entitled to automatic citizenship. That is all.

Com. Kabira: Thank you very much.

Nancy Koech: My name is Nancy Koech and I have a memorandum for Mulot Division Women's rights:

A woman has the right to own property in that home that is her matrimonial home.

Then, a woman has the right to speak and be heard by the community. A woman has a right to own land and the title deed and joint account in case of financial matters. A woman has a right to inherit from the husband. 50 per cent of the women to participate in legislation and local authorities through nomination, that is, 50 per cent of women should be presented or nominated in Local Authorities and administration e.g. chiefs. Women should be recognised in the community in areas such as employment in all sectors equally with men. Inheritance should be equal in the family for both sons and daughters.

For the disabled, their issues have already been presented but I am going to read it from this memorandum: Disabled women should be given special security, free education, employment and especially in leadership. In any committee, disabled women should be considered. Other issues are: 50 per cent of women to be represented at the local control board. Unmarried daughters to have equal shares in family wealth as the sons. The constitution should pass a law to stop FGM and to protect girls from torture, cruelty, inhuman or degrading punishment such as forced marriages. Participation of women in decision-making will lead to good governance. With those views, thank you.

In Mulot Catholic Hall, the issues of land, natural resources, equal access to land by men and women, marriage, federal government, reducing the powers of the president, basic needs of water, health, education, security, food and employment were high on their agenda.

Comment

At these 'women only' hearings, women articulated their views clearly. They were concerned about land ownership, representation in decision-making positions, freedom to make choices, peace at home, inheritance of land by women from their parents and abolition of the female genital mutilation. In addition, protection of widows, equal rights of men and women, equal rights in conferring of citizenship, and abolition of dowry among other issues. Clearly, women's issues were well articulated by this group.

Narok South Constituency Public Hearings, at Ole Ntutu Arid Zone Primary School on Tuesday July 9th 2002

Women Only Session

The following are the voices of women at a women's only session.

Kunini Ketita: We have problems here because of lack of education and poor leadership. Because of this, we want to be able to elect our leaders directly.

Com. Kabira: Has she finished? Ok. Thank you.

Anna Namarat: We want education for Maasai girls, other basic needs such as water, health, appointment of women as chiefs and as members in land control boards, inheritance of land by single mothers and protection of forests, among others.

Com. Kabira: Thank you very much Anna.

Anastasia Lanoi: We want protection of persons with disabilities, their representation in parliament, and appropriate buildings for persons with disabilities, among other issues.

Com. Kabira: Thank you very much.

Loise Ole Ntutu: As a woman, I want to support those disabled people. I am one of the women who have been oppressed and I am talking from experience and not from hearsay. I wanted to take my child to Nakuru Special School but I could not manage because of lack of money. I want persons with disabilities to be protected, the right of men and women to own land, the constitution to deal with animal/human conflict and to deal with poverty. "The other thing is that I keep hearing about compensation money for people attacked by wild animals. Do you women know about this money? We don't know. But I am an old woman of 67 years and I don't know to whom that money is paid. Don't women have rights? Is there a country which has only men and another one which has only women? Some are so poor that they don't even know they own a country. So, go and add that one too. That women are suffering because of wild animals and they are the ones taking care of children. Do you understand me?"

Com. Kabira: Yes, we do.

Ruth Mbonge: I was born here and was married here. It is true that among the Maasais, a woman is not counted as an important person. She is counted just as a shepherd or as a watchman or just as a tool which is weak. This is especially so when I look at the side of inheritance, which is one of the areas where she is not considered. You know that she is the one who built that boma, has children there, male or female, but she is not considered. Why?

When it comes to the sale of land, many have sold land without involving their wives and I wonder why because there is the Land Control Board. It has been written that one cannot sell land alone; they must bring along their wife, they must be in agreement so that the land may be sold. We are shocked as women when we find that the family land was sold a long time ago and we don't know how or where the money went to. You will be lucky if you are brought something small. But when that happens and you start asking where the money has come from because you don't know what work he does, you are not told at that moment, you will be told the source of the money more than one year after the land was sold. Sometimes, you are even told to move out of your home because the land has been sold. Then you wonder how this land came to be sold.

Then there is the issue of inheritance. When one has children, both male and female and maybe some of the girls don't get married and they already have children, it is only the boys who inherit their parent's properties. These girls don't even have a voice in their homes and yet they are not children who were picked from somewhere else. They were born just the same way the boys were. We are just wondering, isn't that wrong even before God? Because these children, both girls and boys, were given to you by God. So, I want both the girls and boys to have an equal share of their parent's property. This is because, it was not the woman who decided that she would only give birth to daughters while the man decided to give birth only to sons.

I see that the biggest share of the money that comes into the country comes from the animal products. And when we look at Maasai children, most of their parents do not have jobs and they are people who move from one place to another. Sometimes when famine comes, the cattle die. Even if they wanted to educate their children, then the famine won't let them. I propose that if it is possible, because it is possible, some of the money that is brought in by cattle products be set aside to educate Maasai children.

I am wondering – since we have wild animals and it is the white tourists who come from far and leave pots of money, why are our children without education? I want the title deed to be in the names of the family members; the father, mother and children because that is the property of the family. That way, the man will not have the power to sell the property.

Com. Kabira: Thank you very much Ruth.

Alice Singine: I want to add on to what the women have said. Women should be given equal rights especially in education of both boys and girls. The second thing is about inheritance. Most of the African communities

don't allow girls to inherit their parents' property. But that should now stop because the world has changed and children are equal.

The other thing concerns leadership. Women have not been given enough chances especially in posts such as for DCs. Most DCs are men. Not that women are incapable, women are very capable but only that they are not given a chance. And about the president, I would propose that the president be given a maximum of two terms in office. When it comes to nominations, women should be given equal chances. When we go to local governments, women should also be given a chance.

Female circumcision should be stopped completely in all societies. I am a Kalenjin and in our society, when a girl gets circumcised, that is the license to get married. If there is no school fees, there is no way out. You have to get married. But if you are not circumcised, sometimes they leave you alone and say you could stay at home longer and that way you might even get a bursary.

Rose Ruigo: I am not a resident here I have just come to work here. I was born in Central Province. I shall talk in general because if I talk for the Maasai, I would be doing them wrong since I do not know much.

First, is that, in the current constitution, the rights of a woman are not defined; they should so that we know our rights are one, two three. Because even to be beaten by a man is unconstitutional, you are human, he is human, he is a grown up; you are a grown up, you can talk, you can agree on something.

Next is the land dispute: Men have been doing things on their own. It is the woman who is in charge of the house; she is the one who cares much about the children, "ooooi what will my child eat....ooooi what shall my child do?" The woman is the one who holds everything. She cares for the husband and cares for the children. Therefore, the wife's name should be in the title deed, so that when the shamba is being sold, the man is told, "please go and bring your wife, because this title deed belongs to two people and they shall both sit here."

Nginikita Ngoriata: We have a lot of problems regarding land because the title deed is only in the name of the husband. So, I recommend that it bears the names of the husband, wife and children to prevent cases of selling the family land without the others knowing about it. It is very easy for the man to sell the land if the title deed is only in his name but it will be difficult if the title deed has the names of the wife and children.

Caroline Sopiato: My recommendations are mainly on the Bill of Rights. On the Bill of Rights we women of Narok South agreed that sexual harassment should be outlawed. To prevent impregnation of under aged girls, a clause should be inserted. Our recommendations are: domestic violence and Female Genital Mutilation (FGM) should be outlawed as an

indecent and inhuman treatment against women's rights and it amounts to torture. We thought it important that female genital mutilation and other cruel and inhuman treatment such as gang-raping should be outlawed and a clause be put in place to discourage and to punish the offenders.

We also recommend the domestication of all the relevant international conventions on women's rights. We also stress the issue of freedom and security of persons. Provisions should acknowledge the vulnerability of women to violence both by public and private sectors. Violence against women by private actors should be construed as torture, inhuman, cruel, and degrading punishment or treatment.

There should be automatic citizenship for either a husband or a wife or a child born outside Kenya, because right now, the constitution only gives automatic citizenship to a child or a wife by a Kenyan man, but it doesn't give the same to the Kenyan women.

Com. Kabira: Yes, Helen

Hellen Kipetu: I was talking to the councillors the other day because a few women were represented in the committee. Recently, during a meeting of the County Council, I talked about those committees that are being formed because you realise that there are hardly any women in those committees. So, I was telling the councillors to involve women more but already those forms have been filled and sent to Nairobi. That means the committees will stay that way for the next three years.

Com. Kabira: What do you mean Helen?

Hellen Kipetu: We will stay with these committees for another three years before they are changed. So, we have problems because as women, we do not come forward to fight with our enemies. I am sorry to say so.

Speaker: Our councillors are our rivals. For example, my councillor will not include me in his council because I am a threat to him.

Hellen Kipetu: It is not just you. There are other women who are not there in the Committees.

Speaker: He will make sure that such a thing never happens. I cannot represent my ward and I don't even know how it happened.

Hellen Kipetu: So we have to wait for another three years before the committees are changed and the women are able to be in those committees. That has already happened and it is only God who will help us get that money. Now you know so that when you go to ask, you ask from an informed point of view. You will look for your councillors and get to know the list of the committee members so that you monitor them to ensure your money is not misused.

Com. Kabira: Can you tell us your name?

Caroline Sopiato (contributes once again): My name is Caroline Sopiato and I just have a point that has risen from Councillor Hellen's recommendations. My recommendation is on the government budget. Right now, the government budget is prepared by only a few people and so it becomes a budget of only a few people. It does not involve the community or the women. So, I have a few recommendations for the government budget. That we should have a budget prepared at the district level which should move on to the provincial level and to the main national budget. The other thing is that the budget should be open to all Kenyans and should not be a secret. The central government should not have a special budget while the local government has made its budget public. The other thing is that about 45 per cent of the budget should go to cater for the special needs of women. That is all.

Men also presented their views at this venue. Among them were: Richard Ole Kibos, Saitoti Kisiel, Daniel Ntutu, Sheuri Keshe and N.S Kalanjie. They addressed issues of: Majimbo, land, natural resources, wildlife, representation, recognition of Ogiek people, basic needs, land boards, marginalisation of the Maasai, structures of government, and political parties, among other issues. Some also addressed women's issues.

Section Summary

This session, which combined both women's representation at the plenary and in special hearings, clearly captures the views of women on broader issues on land, environment, system of governments as well as critical issues at the family level.

Other issues were: Water for all Maasai people which was identified as paramount; then protection from wild animals; security; education and accessible health services; Affirmative Action for women's representation where 33 per cent of women would be in parliament and in all decision making positions, including local authorities, women to be part of the Elders' Councils; 80 per cent of local resources to benefit local people; land commissions, gender and anti-corruption commissions to be established; equal access to inheritance of property by both boys and girls; married women to have the right to own property; land boards and other boards to have 50 per cent women's representation; equal access to land by men and women; local communities to share tourist resources; to have a Federal Government; devolution of resources; protection of minorities e.g. Ogiek; equal rights to education for both boys and girls; and that girls should inherit land and property. Security and protection against gender based violence; 80 per cent of the National budget to go to the local government and 20 per cent to the central government; retention of the Maasai culture, dual citizenship to be retained; decentralisation of health services; management of environment; marginalisation of Maasai women to be addressed; Affirmative Action in order to ensure equality and respect for diversity and equal access to education for all; and equal rights for men and women. There was also great focus on the control of resources; federal system; education;

titles; Affirmative Action for women's representation; women's rights; and protection from domestic violence, among others. We note also that many represented women groups. They therefore spoke for themselves and many others.

It is important to note that at the individual level, women discussed more about family issues, for example, marriage, inheritance, pregnancy, security, basic needs, and girls' problems. Civic education had also been carried out because the women memoranda also dealt with issues of power, of citizenship, of devolution of resources, of right of recall for MPs, among other issues. But as we have seen, they also gave their views on systems of government, devolution, executive representation of the people, and the preamble to the constitution, among others, particularly when presenting on behalf of women groups and women's organisations.

Some of the women, including, Mary Salat, Hellen Kibetu and Caroline Sopiato presented at both women session and the general plenary. This demonstrates the importance of exposure for women and how their empowerment makes them represent both the women and their communities. The women demanded to be part of the main hearing where male leaders were presenting their views. They even expressed their displeasure that all the men that had spoken had not addressed women's issues.

Section 6: Voices from Eastern Province

(Isiolo, Meru, Tharaka Nithi, Embu, Kitui, Machakos, Makueni counties)

Introduction

We were also in Eastern Province, a land for many communities too. It is the land of the Ameru, Ciokaraines people, the land of the Ambeere people, the land of the Aembu, the Akamba and also the land of Rendiles and Samburus among others. I am now reminded of Ciokaraine M'Barungu, the female Meru warrior who "flapped her already drooping breasts at the colonial powers, pleading for the lives of the Ameru children." Referring to her experience with the white man, Ciokaraine says:

"I rumbled on, like a hurt mother elephant. I told the whites that it was we, the mothers, who knew the pain of child bearing and we could not therefore stand by to see the famine wrecked on the land (*Kabira and Nzioki*, 1994: 39).

Ciokaraine was crowned chief in 1952 and even the famous male institution, Njuri Ncheke, anointed her. She, the woman from Ntonyiri was a warrior. She stood in the line of duty and worked for the freedom of her people. We have to keep reminding ourselves that we stand on the shoulders of many who have walked this journey. Those who had the courage to emerge from the shadows.

Eastern province is a land of contrasts. Jomo Kenyatta (1947) wrote about the land in *Facing Mount Kenya*. Some of the people live in the belly of this sacred mountain from which Gikūyū and Mūmbi, the ancestors of the Agikūyū of Central Province emerged. It is the land of the Akamba people, the people from the land of Mount Syokimau and Iluvia, people of the late Hon. Ngei, people of Mbooni Hills, land of the great dancers of Kilumi. It is the land of the Akamba who organised themselves to protect Kenya from the white colonialists. It is also the land of the beautiful hills of Masako, of Mbooni.

Eastern Province is also the land of the Rendiles, the Boranas—those of our people too whose voices always cry to be heard. Eastern Province is the land of many daughters who have emerged from the shadows and spoken. It is the land of Charity Kaluki Ngilu, the first woman Presidential candidate in Kenya; the land of Agnes Ndeti who braved both KANU and DP; it is the land of Adelina Mwau, the never tiring women activist; the land of Kathleen Maloba Kanes; the life time Trade Unionist, and it is also the land of Paul Ngei of the Kapenguria Six⁴ and Ngala Mwendwa of the Lancaster House Negotiations.⁵ Eastern Province is the land of Joe Nyaga, he of the independence struggle, of

⁴ Kapenguria six refers to 6 freedom fighters who were detained in Kapenguria by the colonial government among them Kenyatta, Ngei and Oneko.

⁵ Lancaster house negotiations refer to a team of Kenyans who traveled to Lancaster House in Britain before 1963 Independence to negotiate for Independent Constitution. Among them were Jomo Kenyatta and Ngala Mwendwa.

young Cecily Mbarire of the people of Embu, of the people of Imenti; of General Mwariama and General Maimunge and many other freedom fighters.

One of the things that struck us, commissioners, as we listened to the people give their views was the large number of retired civil servants and how they were worn out by poverty. You could tell about the people and their experiences, when they stood up to speak and introduce themselves. In Kangundo for instance, we had the opportunity to be at the same sitting with the former Attorney General, Mathew Guy Muli, who I requested to preside over the session. I reasoned, "What could I say about the constitution when a man of such experience as Mathew Guy Muli is in the audience?"

The former AG had the opportunity to talk about his experiences with the constitution making including the fact that he himself was forced to remove the power of the AG within an hour in parliament. He was open with the people and discussed how the constitution no longer looked like the original Kenyan constitution because of the many amendments by the two governments of Kenyatta and Moi.

Presentations

Makueni Constituency on 21.5.2002 at Matiliku Catholic Church

In Matiliku Church, Abida Ali, Commissioner Issack Hassan, and I, listened to the views of the people and at a session where many women presented, we were lucky to have a man come forward to help us communicate with the audience and even promote civic education among his people. It turned out that he had been a retired public prosecutor. We also met many other retired public servants in many of the places we visited in Eastern Province particularly in Kibwezi, Makueni, Machakos, and Embu, among other places. The common characteristic of these public servants was in the way they appeared beaten by poverty and by lack of basic resources. Many public servants in other parts of the country looked weather beaten too but not as much as in Ukambani. This is a clear indication of how our systems use the skills of our people and then drop them "just like that". Unlike South Africa and Mauritius and other countries where they have a law to facilitate support for the elderly, we continue to believe that our elderly people are looked after by their extended families. We pretend that Europe and the West do not care for their elderly people because they send them to homes, but the reality of the matter is that, we in this country, do very little for those who have spent their lives in the service of our nation. The new constitution has a provision in Article 57, on the rights of the elderly, thanks to the concerns of many poor people who presented their views to the commission.

Margaret Chuma, who represented a women group, was very clear of what the group wanted. The issues she presented were: the importance of

capturing women's experience in the struggle for Kenya's Independence and the democratic struggle; the president to share power with parliament; one-third women's representation in parliament through district representation in parliament and local authorities; right to recall members of parliament; the president not to be above the law; a clean judiciary; all commissions to have one-third women's representation; basic needs e.g. water, food, shelter, education, security; vulnerable groups to be given a right to participate in governance structures as well as in all other decision making positions; and Muslim women's rights to be protected.

Caroline Kenga from Nzue Girls wanted: Free and compulsory education for all; and corporal punishment to be abolished. Water and healthcare to be available for all; severe punishment for rapists; compensation for those who have been raped; inheritance of land by both boys and girls; title deeds for both husband and wife; circumcision of girls to be abolished.

Faith Kyalo wanted free education; teacher's salaries to be increased; employment for all and free medical care, relief food – for those who need it; and clean water for all.

Rose Mulu wanted equality of citizenship for both men and women; dual citizenship; recall of MPs, and promotion of a culture of negotiations.

AIC Nunguni on Monday 20th May, 2002, the public hearing was very well attended. Among the presenters; Nunguni Handcraft Women Group was there to give their views.

Tabitha Neka and Anastacia Mbithe presented the group's recommendations. They proposed a limit of four political parties; government money not to be used for campaigns; no *majimbo* system; parliamentarians to work full time; and a right of recall for the constituents. The women also wanted an independent commission to decide on the salaries of members of parliament; that the president not to be above the law; chiefs and sub-chiefs to be elected by the people; counting of votes to be done at the voting stations; and election dates to be known in advance. Also that women's rights to be implemented; people with disability as single parents to be cared for as well.

Jane Muloo an 18 year old girl, who at the time was in Form II, wanted female circumcision to be abolished.

Berita Kiamba wanted women and men to have equal access to and control of land and equal access to title deeds. She also wanted title deeds to be in the names of both husband and wife; also, equitable distribution of resources.

Clara Aguthi, who was also an 18 year old girl then, wanted one third of seats to be reserved for women in parliament and local authorities; and rapists to get life sentences.

Juliana Mwanja, another 18 year old girl from Precious Blood Kilungu, wanted government land not to be allocated to a person without parliamentary approval.

Anne Kiema from AIC Nunguni Secondary School wanted equal distribution of resources e.g. roads, hospitals, and employment, among other issues.

Irene Ngate wanted doctors to be well paid, to observe professional ethics and not to carry out abortion. She wanted access to water for all in the country.

Kilome Constituency on 21-5-2002 at Enzai

Esther Kikui had this to say: "Those who fought for Independence should be compensated; women and men should be able to confer citizenship to their children."

Cecilia Tito wanted women to own property, "girls and boys should have equal rights to the inheritance of land and property belonging to their parents. Wife beating should be banned," she said, "and all harmful cultural practices should also be banned." In her view, widows should have access to their husband's property and rapists should be jailed for life.

Mary Wamaita wanted land title deeds to be in joint names of the husband and wife because "*Pahali ya Mama ni wapi?*" (where is a mother's place?) She asked. A woman must have a place "*Tujue kwetu ni wapi akina mama*" (we need to know where we belong). She wanted women to be assisted because they were heavily burdened at home; the deaf to be assisted and mayors and chairs of local councils to be directly elected.

Alice Mutunge, wanted men and women to be able to confer citizenship to children; freedom of worship; payment of village leaders; drugs and drunkenness, to be got rid of; street families to be rehabilitated; anyone to be able to buy land anywhere in the country; and punishment of rapists.

Monica Ngina Mutua wanted women to inherit land from their husbands; widows, widowers and orphans to be looked after; protection of widows against sexual harassment; unemployment and corruption to be eradicated.

Grace Alex wanted 30 per cent women's representation in parliament; voter education to be an on-going exercise, equal inheritance for boys and girls; MPs who do not perform to be recalled; and 'O' levels qualifications for councillors.

There were many men who attended this session including William Matheka whose views were representative of those of most of the men and focused on citizenship; parliamentary elections; the executive and also included the views that women should have 30 per cent representation in parliament and local authorities. In addition, like a number of men at the same setting, he wanted direct election of the mayors; basic needs to be basic rights; and judicial reforms. Others like the leader of a youth group, Benjamin Mwangangi, emphasised 35 plus as the age of the president; and MPs to be 40 years old. Other men who participated included Benjamin Muthoka, Judas Mutua, a Chief, Joseph Kioko who wanted girls to inherit land; Rael Muoki, who wanted women's rights to be addressed; Justus Ngunga, who wanted *majimbo* (regionalism); judicial review; reduction of powers of the president; and management of political parties, among others issues.

Martin Kasenge of Uhuru Welfare Association wanted freedom fighters to be compensated; while David Kitika wanted all those above 60 years to be under social welfare. Issues of food security, water, health, etc, were extensively mentioned.

Benson Mutotoka who wanted discrimination against women not to be allowed. He also wanted an office of the Ombudsman; removal of the 999 years lease; and Kenyans not to have more than 2 acres of land; a minimum of at least 3 political parties; reduction of powers of the president; review of electoral systems; women to be 30 per cent in parliament and local authority; right of recall; etc. Other men were Arthur Nzomo, Paul Kimundu, Andrew Kilenge, Bernard Kiveu and the District Officer, Olentutu from Kasiiki Division. Councillor Ngoloma and Julius Maundu, who represented Kilia Women Group and whose representation did not include issues presented by women. Others were Julius Mutuku, Fredrick Makau Mutinde, John Ngili, Hon. Mutiso who had a lot to say about land and property rights, indigenous land rights; and equitable distribution of land; among others.

Grace Loti wanted "*Wanawake Wachungwe*" (women to be protected and taken care of). She also wanted the government to look after the children and the elderly.

Justina Kasunga wanted women to have their rights, be free from traditions and culture and the right to be human beings.

Rebecca Nzuki wanted: Violence against women to be eradicated; rights for both boys and girls to education; women to be economically empowered; government to take care of widows.

Margaret Mutua wanted government to help street children, and Female Genital Mutilation to be banned.

In Embu, we collected views from people of Embu and also those of upper Eastern and lower Eastern.

Embu Municipal Hall, public hearings on 10.12.2001, majority of those who presented their views were young men; but there were elderly men too and women. Among the women, Councillor Dionesia Muriithi of the Embu Political Mobilisation Network was very passionate about women's participation in politics. In her presentation on behalf of Women Mobilisation Network, a network of women in politics whose establishment had been facilitated by the Collaborative Centre for Gender and Development and which, with other six networks from the various provinces, had mobilised women in 120 constituencies to encourage them to present their views to the commission.

Councillor Muriithi presented her views and that of Women Mobilisation Network, Kwaidera Self Help Group and Democratic Women of Embu. The three groups had sat together and prepared a memorandum. In the memorandum presented by Councillor Dionisia Muriithi, the women wanted: All Kenyans to be treated equally before the law; international convention agreements to be domesticated and implemented; both men and women to be able to confer citizenship to their children; rights of minorities to be protected; 33 per cent Affirmative Action for women in parliament and local authorities; power to govern to be devolved to local authorities in relation to education, health, agriculture, security, defence, and national policies; to address the issues of landlessness and squatters; local authorities to be strengthened; revenue to be collected and 70 per cent kept while giving 30 per cent to central government; Affirmative Action of 33 per cent women's representation in judiciary; and continuing voter registration.

Sarah Karigi, the then Secretary of Embu Women League, wanted to ensure protection of the orphans; protection of women's rights and allowing for minority progress at the local level.

Others, among them, Yusuf Wako from Friends of Nomads International, Isiolo, wanted protection of minority groups and vulnerable groups. He rooted also for basic needs, social economic development, Affirmative Action for pastoralists, Affirmative Action to re-dress past discrimination, a unitary system of Government and strong local authorities.

Mr. Hassan Wako Wario, also from Isiolo wanted protection of Kadhis Courts; a region which would bring together Isiolo, Moyale, Marsabit and the removal of screen cards, yellow cards, e.t.c. which enhance discrimination against the people of Upper Eastern and North Eastern Regions. Like many other people from Upper Eastern, he wanted protection of indigenous peoples; devolution of power; accountability of politicians; guarding of cultural identity; Affirmative Action for women and indigenous people particularly in the area of politics and education.

They also wanted strengthening of local authorities and review of boundaries and legalizing of trust land. They also wanted poverty of the people of Isiolo, Moyale and Marsabit to be addressed.

Asli Ahmed Holake, the chairlady of Maendeleo Ya Wanawake, wanted Isiolo women to be supported and that they become Chief Kadhis too, and to have access to water for they spend a lot of their time fetching water.

Mr. Ndege, Secretary of Catholic Men's Association Embu, on his wanted a Coalition government; prime minister to be elected by the people, and free basic education to be put in place.

Mr. Julius Mworira, a councillor from Meru Municipal Council, wanted 70 per cent of revenue collected by local authorities to be used by the council while 30 per cent is given to the coalition government; mayors to be elected directly; land distribution to be left to the councils; and water to be availed.

Kenya National Union of Teachers was not left behind. The organisation wanted a comprehensive education policy; strengthening of trade unions and retirement policy.

Mr. Dickson of KNUT wanted parliament to be labelled "*United House of Tribes*"; protection of orphans and the terminally ill; water; electricity; and education. Others at this provincial hearing were the Youth Empowerment Forum.

Robert Kinyua, a disabled person, wanted transparent governance and leadership.

Shadrak Nyaga wanted us to follow the spirit of the National Anthem, have two-chamber parliament, protect fundamental human rights and to strengthen local authorities, among other issues.

In Embu County Hall on 11.12.2001, a number of elderly men said they did not want *majimbo* because, they argued, it would create ethnic violence and Kenya should remain united.

At this session, Sister Aldina, who was in charge of a children's home, wanted protection of street children; husbands to stop sending mothers away and the protection of children's rights. She wanted Affiliation Act back and poverty to be eradicated.

Rose Rubaga of Women Resource Centre (WRC) wanted money for campaign to be limited; political parties to have not less than one third women's representation in all leadership positions; and security for women candidates during elections. In addition, she wanted women and men to have equal capacity to confer citizenship to their children.

Miriam of Makindu in Makueni wanted women's representation in parliament through district representation; and local government and parliament to have at least 30 per cent women's representation.

Jane Kimeu of Kaiti wanted rapists to be given death sentences.

Mr Charles Mugane at the same sitting wanted women to inherit property, *Majimbo* not to be considered; and all stolen land to be recovered.

Councillor Rhoda Maende is one of the women leaders who were at the forefront in the struggle for Affirmative Action and for women's representation in the Constitution Review Process and at Bomas. Rhoda wanted boys and girls to be treated equally; free education for all; women not to be discriminated against; basic rights, that is, clean water, shelter, health, food, security, and employment to be addressed by government. In addition, Rhoda wanted Affirmative Action for all marginalised groups especially women and the disabled; land title deeds to be forever—not 99 years; title deeds to have both names, that is, husband and wife; women ownership of property to be recognised and protected. She was also of the view that mayors should be elected by people and for 5 years; the powers of the president to be reduced and Affirmative Action for women in all decision making levels to be 50 per cent women's representation.

Section Summary

In Eastern province, Nunguni, Kaiti Constituency, Kibwezi, Kilome, Manyatta, Embu, Meru North, Isiolo North and Isiolo South among other constituencies, women focused on equitable distribution of resources; women's empowerment; support to people with disabilities; equal access to land and resources by women; 33 per cent women's representation in parliament and local authorities, gender based violence; harmful traditional practices; corruption; free primary education for boys and girls; poverty; women access to title deeds and taking care of the marginalised.

For these communities as for many of the Kenyan communities elsewhere, basic needs such as water, shelter, food, health, education and security, were of priority. It was also important for the women in these constituencies to deal with issues of inheritance for both boys and girls. In addition, women's organisations presented on issues related to the structure of government; reducing powers of the president; and equitable distribution of resources, among other issues.

It was clear that women in these organised groups were very conversant with the issues of governance, women's rights and land, among others. Their level of participation at the meeting was very high. From the presentations, one could see that there was a great sense of alienation from the central government and a desire to release the people's power back to them. The issue of taxation and using the same to support local needs was one of the major concerns of the people in Embu.

It is interesting to note that many male presenters in Eastern Province as in other parts of the country talked about the Affirmative Action for women; the 30 per cent representation in parliament and in local authorities. This is also interesting because it means that women's effort had reached not only women but men as well.

Women from Eastern Province had issues they wanted addressed. These issues include: land titles and women's interest in them which was also of concern for women in Nyanza, Rift Valley, Central, Western and other areas. Also, needing to be addressed was the need for transparent, democratic governance, gender based violence; women's representation in parliament and local authorities and implementation of the one third Affirmative Action principle; and the right of recall for members of parliament, among others issues.

Over all: Women in this Province wanted: Affirmative Action for women's participation in parliament; local authorities and other decision making bodies; inheritance rights; land rights; and the Affiliation Act. Their view, like those of the men, also focused on: basic needs; strengthening of local authorities; land question; electoral process; reduction of powers of the presidency; corruption; security; composition of parliament; marginalised groups and communities; devolution of power; Judiciary; and natural resources, among other issues.

Section 7: Voices from Central Province

The land of Gĩkũyũ and Mũmbi (Nyandarua, Nyeri, Kirinyaga, Murang'a and Kiambu counties)

Introduction

When you go to Central Kenya, you will find the Agĩkũyũ. The Gĩkũyũ people have a prayer that says:

Ngai (God) loves the Agĩkũyũ.
He gave them land where food, water and forests are always available;
Let us always thank Ngai for this bounty.

When the great daughter of Mũmbi and the Nobel Laureate, Wangarĩ Maathai who has now passed on and is with her maker, remembers this prayer, she must ask herself “Where are those forests now? Where is the beautiful Mt. Kenya forest? The Aberdare forests, Kĩnarĩ forests, Kiriita forests, the snow on Mt. Kenya? Where is it?” The *mĩgumo* trees, *mĩkĩma*, *mĩkũyũ*, *mĩkindũri*, *mĩtũndũ* and all the other beautiful trees; where are they, you daughters and sons of Mũmbi? I would have no answer, dear Wangarĩ. This community valued the soil so much that they were ready to die for it. Their freedom fighters got protection from the Aberdare Forests, among other forests, as they fought the Mau Mau War of Liberation in 1950s. They now have to give an account of what has gone wrong with the forests, the snow on Mt. Kenya that awed them, the trees, the animals, the rivers from which they drank sweet waters. The people of Central Kenya have their own history, they have the history of their struggle with the white colonialists, of Kĩmathi's death at the hands of the colonisers. That warrior who could crawl for seven miles and whose presence was enough for prison doors to open and release the freedom fighters called “terrorists” by the colonialists. The women in the province played their part in the struggle. They coalesced under *Mũmbi Central Association*, the women's wing of the Mau Mau.

This is the land of Wangũ wa Makeri whose story has now become a legend; it is the land of Rahab Wabici, Wanjirũ wa Kaguru, Grace Wakoia, Njoki wa Hiram, Sarah Wambui and many other women who fought in the struggle. It is also the land of Mũthoni Likimani and Field Marshal Mũthoni who fought side by side with Kĩmathi. Actually, field Marshal Mũthoni was Dedan Kĩmathi's second in command after Mathenge, the erstwhile deputy, vanished. Field Marshal Mũthoni has defied political, social and economic upheavals. There are many stories and experiences of our women which still have to find their way into public domain. They have to be part of public knowledge and to feed into policies that will transform Africa for the benefits of her people. Central Kenya is also the land of Nyakĩnyua Women Groups, of ũtheri wa Lari (the light of Lari) among other groups that defied culture and tradition and bought land in their own names and fought provincial administration while at it. To

date, some cases against land grabbers are in court, even as the women exit from this life and ask their daughters to follow up their land in the Rift Valley which women bought in their groups such as “Utheri wa Lari, Nyakinyua Women Group”, among others. They have handed over the baton and their daughters continue to pursue their mothers’ dreams of economic independence.

When we moved to Central Province, we found that the women’s views were very similar to those in other provinces. The women’s main focus was on: Land and the inheritance issues. This had been a struggle for many years. Those who know Central Province understand how important land is to all the people. It is the basic resource for survival for many in the province. The question of poverty, desire to address basic needs of water, food, shelter and security, among others, is a way of a people who have been burdened by poverty. Issues of equality between men and women have been debated. Social, cultural and economic changes have been taking place. Here, women have moved forward. As said earlier, ordinary women – the strugglers – formed groups in the fifties, sixties and seventies, built *mabati* (tin) houses for each other, bought land, and continued to struggle for the survival of their children. There are many female headed households, many girls supporting their parents and many social-cultural changes. However, like many other Kenyan women, they wanted their rights on land, property and other rights entrenched in the constitution. The following are samples of voices of the women from Central Province.

Presentations

South Kinangop Constituency Njabini 17-4-2002 I was at this public hearing with Bishop Bernard Njoroge Kariuki and Mr. Paul Musili Wambua.

Florence Wangari, How are you? My name is Florence and I am a student.

First, it’s about land. I think land should be fairly distributed, because there are so many people who are landless, who even do not have anywhere to sleep, and yet we have so much land in our country which is not being used. Many people own very large portions of land, which they do not use.

Second, it’s about security. We do not have security in our country today. For example, you cannot walk at night; you do not feel secure to walk at night and yet this is our country. We should be safe and secure in our own country. I think the government should provide enough security for everyone. We should have freedom to move around because in this country we have freedom—every citizen or every member of this country should have freedom to walk even at night, without being asked, “where are you going and where are you coming from?” Because this is an independent country, I think people should have freedom to be at any

place at any time, and there should be enough security for that person to be at that place at that particular time.

Third, this being an agricultural country, I think that farmers should be protected from exploitation. Today, the farmers are doing a lot of work and things like fertilisers are very expensive. Farm machineries are expensive too and yet our products are being sold at very low prices. We, the farmers, are the ones who are suffering, and someone else somewhere is selling those products at very high prices. So I think the farmers should protect the government.

Fourth, it's about the people who govern us. For example the P.C., the D.C., and the D.O. We rely on these people; they rule us. So I think we should elect these people and not be appointed by someone else. This is because these people are coming to deal with us, and it is us people who should elect them.

Fifth is about the Vice President. I think that the Vice President is a very important person in our community today. He is a leader, it is us who he leads, he is the next from the president and I think that he should be elected and not just appointed by one person; may be elected by us the people, or by parliament.

Lastly, there is so much harassment from the police today. You cannot walk at night. Sometimes, may be you have done nothing wrong but you are being harassed. I think that the police should protect us people and not harass us. That's all I had. Thank you.

Elizabeth Wangari, a women group leader, wanted all women to inherit their husband's land and then divide the land to her children.

Teresia Njeri wanted to have a constitution that guarantees equality between men and women. She wanted single mothers to be protected by the constitution and women to be allowed to give citizenship to their children. In addition, Teresia wanted transparency in counting of votes, a president to have a wife, who would become the country's first lady, and financial support for political parties.

Mary Gichuki at the same sitting was also of the view that the president should have a wife. She wanted also to have a constitution that guaranteed equality of men and women. Mary also wanted the basic needs of water, food security, health, education and shelter to be guaranteed for all Kenyans. She also wanted: women to be appointed chiefs, promotion of education for women and girls; employment for all; 50 per cent women's representation in boards; and if a president is a man, the vice president to be a woman.

Benson Maina at the same sitting wanted: The president not to be above the law; distribution of power between the three arms of government, that is, Executive, Parliament and the Judiciary; electoral commissioners to be

independent; elections to be completed by December; a referendum or constitutional conference to adopt the new constitution; forests to be protected; and the right to own property anywhere in the country. Also, the election date not to be a secret weapon for the president; after the elections, the president to have 20-30 days to hand over power; vote of no confidence of 50 per cent to be enough; prisoners to be treated in a humane way; and proportional representation as an electoral process to be adopted.

John Kiboro, Ford Kenya representative, addressed land issues, powers of the president, good governance, the executive, political parties, citizen's rights and healthy environment, among other issues.

In Constituency Public Hearings, Kinangop Catholic Church Engineer on Thursday, April 18th 2002

There were hardly any women at the hearing except two powerful women, namely Beth Wahito Njoroge and Grace Wanjiku Njuki and I quote them verbatim:

Beth Wahito Njoroge Thank you commissioner for giving me this chance to speak. There is one point I want to say. My name is Beth Wahito Njoroge. What I want to start with is this constitution that we have been talking about since morning, should be drafted and everyone should know what it states because it is very important for everyone to know about the laws of his/her country. What I want to stress about is the respect for the constitution. We have corruption in our country today because the constitution that we have is not respected. Those in leadership positions do not respect the constitution and they cannot even be taken to court. May be you remember when Mwai Kibaki filed a petition in court challenging President Moi and he was told that he had to personally serve the president with the petition papers but they knew very well that he could not get access to the president. That matter ended just like that because the president's word is final.

I also want the new constitution to address issues facing all Kenyans. You get two people who are both learned and employed by the same government but while one gets Ksh 5,000 at the end of the month, the other gets Ksh 1,000,000. Right now, we are saying no to corruption but the policeman or police woman still gets Ksh 4,000 at the end of the month. How can you expect that person to raise a family with Ksh4,000? He/she needs to educate their children in the schools that the other is taking his/her children because those who earn Ksh 1,000,000 take their children to academies. That police man also wants his children to go to the same academy as his friend who is earning Ksh 1,000,000. He is therefore forced by circumstances to engage in illegal activities like asking for bribes so as to live like the other civil servant who also does

the same work as that policeman. That is why I want salaries to be harmonised.

Kenya is a very rich country but you still see people who earn Ksh3,000, Ksh4,000 or Ksh5,000 being retrenched. But those who earn Ksh1,000,000 to Ksh700,000 are not sent home. If the later salary was reduced to about Ksh30,000 to Ksh40,000, those who are being retrenched cannot go home because there will be enough money to cater for everyone. The retrenched person is sent home with his/her benefits which amount to about Ksh40,000. He/she is worse off than the person who has lived here packing potatoes into bags.

And a matter concerning our government: A councillor gets a salary of Ksh10,000 and spends the day with the local people because they live in the same location. No councillor goes to sit in the council. They spend the most time with the people at the grassroots level. Look into that issue as well. Their salaries need to be increased so that they can meet the problems of the people. Thank you.

Grace Wanjiku Njuki I was there to see the independence of this country and I am here today to say what I want to say. So I thank God for saving me.

Let us step back into the past. There are those who fought for the independence of this country. We have today and that is why we constantly remember them in prayers. Sometimes I look back and wonder whether people ask themselves about where our country came from. Those people who helped us get here were called Mau Mau. Those are the people who are finished today. Those who live in abject poverty. Others are spirits (dead), others live in the villages, others are only known by their children but I tried all means possible. I said to myself, when Kenyatta is giving out the first land, Wa Njuki will be there. And now here my land is plot 209. I thank God because of that and because my youth did not get wasted. And I am still here.

I just wanted to remind you of where we started from. I want the new constitution to remember the Mau Mau who brought us where we are. I want a good constitution. That is why I am happy to hear that what we are saying here will be considered so that we would not be wasting our breath.

Our youth – male and female children – are learned but with all their knowledge, they still waste away at home. The one who changes our constitution should remember our female and male children in jobs. We have been teaching our children since we got independence. I was born in Uasin Gishu and it is a large place but it is also in Kenya. But there are also large pieces of land that are just left for wild animals. We should have the right to live anywhere in Kenya from the forest of Nyandarua to Uasin Gishu. Where there are game parks, that land should be divided to

our children. Sometimes I wonder why the colonialists left Kenya. There are still many white people who own big pieces of land. It is ok that they are now Kenyan citizens but I also want a part of the land to give to my children.

Our daughters' lives are being wasted. Because when a man makes her pregnant, he runs away and it is the girl who is left with the baby. She drops out of school to become a parent while the boy continues with school. We want that boy to be punished too. Because the boy can make one girl pregnant and then runs to another and continue with school because he is not being punished. But if there is a punishment, they might fear to make girls pregnant. May be that way, we can reduced cases of teenage pregnancy. Even the girls should be punished by the parent by them refusing to help in taking care of the child; because the parents seem to be encouraging them by taking care of the children. The constitution should look into that matter of children having children.

Sometimes, you get a man married to five women and there are many others who are not known. The five are known and live with him but when he dies, others come to say they were also married to him. The title deed should be taken by the legal wives even if they re five. The title deed should also have the names of the wives so that there are no problems later.

We don't want the husband abandoning his wife. Because you leave her without reason and get another one and then after some time you leave her too. After getting my daughter pregnant, why do you bring me your children to take care of? Did I send you to work for me? That is where problems come from and we get street children. Let my daughter come back without children because she did not leave here with any. The man should be left to take care of his children and educate them because I do not want to become a maid to the children.

If you feel that you don't want to live with the wife anymore, consider how you are going to take care of your children. The government should take measures to know why the man is throwing out his children and who he expects to take care of them, yet he is the father.

But we do not want the woman to run away from her husband. We also don't want women to be beaten without cause. We don't want a woman who disrespects her husband. We don't want those women who run away from their husbands and go to live alone in towns. Why do you leave your husband to go and rent a house? That is embarrassing other women who will be judged by your actions. When a woman separates with her husband, she should go back to leave with her parents. There are so many such women and are working in businesses and in the farms. The woman can manage to survive even in harsh conditions

because most of the times, she is the one who is left to take care of the home when the man fails to bring in whatever he earns. Most of the time, the man spends the money on drinks and other things.

When we are electing people, even if it is for the position of the village Chief or DO, women should be represented. Women can work anywhere, even in courts. Women are nurturers while men are spenders. That is why they have taken the responsibility of raising their children even without the men. She milks the cows, grazes, takes care of what ever property the man has brought home, all alone. That is why she has to get the courage and take responsibility. The woman is very important because she is the one who takes care of everything.

Let the new constitution give our daughters work. The government should also take care of street children. They should be given a home by the government together with all the other orphaned children. It would be better to be taxed more but we ensure that orphaned children are taken care of.

Here in Kinangop, we are being used by others to achieve their goals. The tarmac road is almost near Njabini. When the constitution gets here at home, we want to know when our roads will start being tarmacked.

In Limuru town, where majority of the presenters were young men, the sense of alienation from government, powerlessness due to poverty and lack of employment, among other issues, arose. Young people were bitter with the way economy was managed; the big gap between the rich and the poor and the general poverty was a major pre-occupation.

Among those who gave their views were Peter Kimani, Wallace Karanja, Ezekiel Kariuki, Peter Ndung'u, Ngonyo, Ng'ethe Njoroge, Richard Nyanjui, David Njenga Kabwere, and Simon Ngugi. They wanted: protection of human rights; funding of political parties; right of recall MPs; president to be elected by all and not to have a constituency; judges to stop being corrupt; people with disabilities to be taken care of; no one to have more than fifty acres of land; women's rights to land to be guaranteed; free education; equality before the law; corruption to be gotten rid of; abolition of provincial administration; election of chiefs and sub chiefs; reduction of the powers of the president; and finally; land cases to be handled by local leaders.

Rosemary Kinyanjui wanted power to be devolved to the community level; the gap between the rich and the poor to be bridged; poverty to be addressed; equality of all including that of women, to be safeguarded; equitable distribution of resources; police harassment to be curbed; and basic needs such as water, health, food, shelter, security, education, employment, to be addressed.

Rahab Njoki Wamene, who was the leader of Limuru Constituency Women Group and speaking on behalf of the group, wanted: equality before the law, automatic citizenship for all children if either the mother or father was a Kenyan, access to basic needs, that is, food, water, access to health, education, security and employment; Affiliation Act to be brought back; Affirmative Action policy to ensure women's participation at all levels; and problems of the youth and persons with disability to be addressed.

Hannah Njeri Martin of Limuru Women Group that Affirmative Action policy of at least one third women's representation in parliament and local authorities should be entrenched in the new constitution; that the electoral system to allow greater women's representation by ensuring the one-third Affirmative Action policy; and that, a limit to the money used for campaign rallies be set.

Margaret Wambui Mwangi noted that this country needed to have a change of heart and that this would be done if we trained our children to be patriotic.

Mary Njoki Mungai wanted public land to be protected from land grabbers; and that, our national resources be protected.

Mary Wanjia Githaiga who wanted us to protect our forests from destruction, address basic needs of food, water, shelter, security and employment and that those who are 18 years and above and have no jobs be given an allowance of Ksh 3,000 a month for survival by the government.

Grace Mugure Njoroge, the chair of Kiambu Women Group, wanted us to promote a culture of negotiations with all communities and to ensure that education, employment and security is available to all.

In Ruiru in Juja Constituency on April 24th 2002 at Catholic Hall Ruiru, a very well attended session.

Many men and women presented their views. Among the people who presented was Gitu wa Kahengari, who is a former Member of Parliament and who later became a delegate at the Bomas Conference. Gitu, a great freedom fighter and defender of those who fought the Mau Mau war of liberation, attended many sessions and at times, we would go with him from one session to another. His passion for the review process and the need for a proper governance structure was unparalleled. I met him at the Bomas Conference. Most delegates would remember him by name. He was one of those most committed delegates and whose presence was felt, a wise and approachable man to whom one could easily talk to.

At the time, Gitu wa Kahengeri looked like he was focused on the future. He was still on a journey and given the path he has travelled and

the fruits of independence still elusive both for him and other freedom fighters, it was not surprising for him to be focused on the future, on the path we were choosing and where it was leading us. By the time of going to press Gitu and his Mau Mau war veteran Association had recently won right to sue Britain over Mau Mau torture. The case was filed in 2009 for compensation over the same.⁶

Gitu wanted the constitution to capture the spirit of collective ownership of this country by all Kenyans, particularly *wananchi* (ordinary citizens). He also wanted the constitution to deal with the land question and recognise that every Kenyan has a right to land. He wanted us to promote the concept of leadership that recognises that “*tunataka kuongozwa*” not “*Kutawalwa*”. (We want to be led, not to be ruled). It was his view that the constitution should recognise the people's struggle for independence and to have monuments for the freedom fighters. Among other issues, he wanted better structures of government, and equitable distribution of resources.

At this session, a number of women presented their views. Among them was Elizabeth Muthoni who wanted: Affirmative Action to be implemented; gender equality to be recognised in the constitution; Affirmative Action for women's representation in parliament and local authorities; basic rights such as health care, water, security, scrapping of maternity charges; land commission; and a gender commission to be put in place.

Martha Njeri wa Macharia wanted the constitution to ensure eradication of poverty and rehabilitation of street children.

Pauline Wanjiru wa Gitau wanted equal access to legal services, corruption in judiciary to be dealt with, and orphans to be supported.

The chairperson of Juja Constituency Women Group, Ms Jean Kiama, wanted women to be able to confer citizenship to children; environment to be protected; local people to be involved in the protection of natural resources; all land to be free hold and all grabbed forest land to be repossessed. They also wanted the president to be limited to two terms.

Nancy Muthoni wanted women to have access to title deeds and women's rights to be entrenched in the constitution.

Ruth Ngugi wanted children's rights to be promoted and women to be enabled to confer citizenship to their children. In addition, Ruth wanted the constitution to address basic needs of children like education, nutrition, health, security and to protect them from all forms of abuse and exploitation; and special courts for children to protect them and punish those who violate their rights.

⁶ Business Daily (Nairobi 22 July, 2011). For further reading on Mau Mau war and torture, see Caroline Elkins' *Britain's Gulag: The Brutal End of Empire in Kenya*, published by Jonathan Cape: London(2005).

A young girl, 12 year old Mary Wanjiru, wanted “street children to be protected and the constitution to address poverty.”

Rose Njuguna wanted the constitution to ensure free education for all; protection from HIV/Aids; care for the aged; funds for the youth; distribution of power and resources; representation of persons with disability at decision making positions; right to life; police to protect and not to shoot and kill but to arrest suspects; equitable development; Kenyan prisons to be improved; employment; MPs not to determine their salaries; and elections to be free and fair.

There were many men who presented their views at this meeting. Among them was Richard Tibo who wanted the constitution to promote and guarantee cultural rights; promote rights of workers and respect for human rights.

Joseph Ngesa wanted the president to be elected by a majority and to remove the 25 per cent from each province. For him, the president should be 40 plus years old and the AG, Police Commissioner, and Senior Civil servants to be appointed by parliament.

Peter Thuita of the Revival Church, a middle aged man, wanted: All citizens to be protected and access to land, among other issues.

Gatimu Maina of the Redempterist Reparation Movement of Kenya (RRMOK) wanted acknowledgement of Mau Mau heroes in the preamble; the British government to pay for the Mau Mau war crimes in Kenya; naming and listing of departed heroes; the president to give progress report every six months; scrapping of provincial administration; a permanent land commission to be put in place; no one to own more than 2,000 acres of land; gazettment of forest land; and looking after the elderly to be addressed.

Similar sentiments on governance, protection of human rights, land and national resources were raised by Joseph Mwaura, David Njoroge, Barnabas of the Catholic Church, Michael Njoroge, Kamonye Manje, Sammy Kamau, Peter Kaburu, Julius Nyamu, and John Kiai among others.

Comments

As I said earlier, this session had a crowd of people, many of them young men but hardly any young girls. Majority of the young people talked about police harassment, about prison terms, about human rights abuse, about prisons. It was as if prisons were second nature to them. It was also evident that many of them were jobless. They seemed to have no hope with the judicial system, members of parliament, provincial administration, among other government bodies.

Section Summary

In Central Province, women and men presented their views with great confidence. The sessions were well attended and there was great hope and anticipation for a better social economic and political order.

Clearly, the women were very definite about the issues they presented. Their focus was not only on women-specific issues but also on issues of good governance and powers of the president, among other issues.

These women also focused on: representation, land issues, poverty, economy, environment, education, inheritance, title deeds, Affiliation Act, security, honouring the freedom fighters, electing provincial administration, gender based violence, among other issues. They were also worried about the future of their youth many of who were unemployed. The youth complained about human rights abuse by the police.

It is clear that women were asking for what they had already declared were their rights in the constitution. This was one part of the covenant. The other was the declaration that a government has a responsibility to provide basic needs for the people they govern and not to misuse power the way our government has been doing. That is the reason women from Central Province also wanted powers of the president to be reduced and for women to be represented in all decision-making positions.

Section 8: Voices from Coast Province

(Mombasa, Kwale, Kilifi, Tana River, Lamu, Taita/Taveta counties)

Introduction

The Coast Province is the land of Mekatilili. It is the land of many men and women whose ancestors experienced the savagery of slave trade. It is also the land of very many people who live below the poverty line in a land where absentee landlords in far away Arab lands own titles. But the Coast Province is also the land of Taarab music; the land of the Giriama people, the Duruma, the Taita, the Taveta people, the Mijikenda communities, the Arabs and a land where many people from upcountry find solace. It is here that in the midst of poverty, we also find many five star hotels. You can, as we did often in Leisure Lodge where the commissioners held several sessions, walk to the beach and look at the endless waters of the Indian Ocean. You look at the water, listen to the sound of the waves as they move to the shore and then back to their home in the sea and wonder at God's creation. While there, you want to sing:

Oh Lord my God, oh how in awesome wonder
consider all the things thy hand hath made.
I see the stars, I hear the mighty thunder
and hear the world, the universe displayed.
Then sings my soul my saviour God to thee,
how great thou art, how great though art? x2

As you retreat, away from the beach, you wonder how many of those Kenyans from *pwani* (Coast Province) have the chance to enjoy these wonders of God's creation. You pray that one day, those little girls who drop out of school at twelve or fifteen will not see their grandchildren repeat the cycle. That the nation will utilise the resources available to ensure that all Kenyans live a life that is worthy of human beings.

Pwani is a land of the *Waswahili*, the people who have given Kenya *Kiswahili*, the language that we cherish of Taita Hills and Taveta whose sweet water quenches the throats of many in Mombasa those beautiful animals in Tsavo National Park that the world converges to see. Coast Province is where the issues of oppression were raised at many fora. It is a land of plenty where people come from all over the world to experience the beautiful weather, to listen to the sound of the waves from the Indian Ocean, to walk bare foot on the sand and feel the warmth of the waters, the warm sweet breeze, the setting sun, the moonlight and the beautiful Giriama dances, the *chakacha*, among others.

It is the land of many struggles, as it is with many other Kenyans. But it is also the land of Mekatilili who led her people in the struggle against colonialists.

She walked from Giriama land to the other end of Kenya to challenge the white rule. It is also the land of many people who struggled against slavery and survived to tell the story. It is the land of the Bura sisters of Saint Joseph who have for close to a century, struggled to serve their people. I met one of these sisters who had moved to Bura from Central Province in 1975. She was now an old woman working in Taru, about 50 kilometres from Mombasa. She was in a small Bura Community right in the bush, a very dry area. She was very happy that she had joined women from Taita and Taveta to serve the Kenyan people.

It is also the land of the late Maggie Gonna, Maimuna Mwidau, Grace Chongwe, Naomi Shabaan of Taita Taveta, Mrs Mwamburi of Voi, of taarabu music, the beautiful Swahili music.

We listened to the people of Coast Province in their own homes, many of them far away from the beach. As with many other Kenyans, we listened to their stories of poverty, of alienation, of living as squatters on their own land where absentee landlords control their existence from faraway lands.

The Bura sisters of St. Joseph had similar experiences. We are aware that early marriages, girls dropping out of school, early pregnancies and poverty, among others, are the order of the day in *Pwani*. Bura Sisters of St. Joseph gave refuge to these girls. It is ironic that Coast Province is our greatest contributor to our GDP through tourism and the port of Mombasa but indigenous people live in poverty. It is not surprising then that many of the Coast people who presented their views were bitter that they live in a land of plenty but in sheer poverty.

Presentations

Mwatate Constituency in ACK Mwakinyungu Church on 2nd May, 2002

Florence Mbalu was the first woman to speak at the meeting. She wanted the local government to control how land is used by those who own it, that is, the community to be involved in division of land; children at the age of 18 to be given land; lesser charges in the transfer of land and women to have equal rights as men to own property. She also wanted the constitution to offer security, health services, water, education, shelter, food and employment. She wanted power for local authority to collect taxes and protect natural resources.

Florence also wanted protection of women and children from sexual abuse, government to take care of the elderly, persons with disabilities, the widows, the poor and orphans. Also, free and fair elections, well managed political parties, freedom to vote and retain the 25 per cent of votes for presidential candidates in five provinces. Further, she wanted a

parliamentary system of government with the prime minister being the head of government.

Angelina Mwakondi on her part wanted the constitution to ensure employment, one man one job; address corruption among the police, particularly traffic police; and remunerate midwives.

Esther Mwang'ombe wanted freedom of the press.

Esther Mwavungwa wanted free education, food security and women in leadership.

Claudia Ngwayi wanted free nursery, primary and secondary education but for the disabled, free education to continue up to the university level. She also wanted natural resources like gemstones, wildlife, marine life that are found in certain areas to first benefit the residents of that area before getting to the central government. "If it is possible, the benefits should be shared on a 50-50 basis. In the area of National Parks, we want the constitution to make the parks give at least 10 per cent of its land to the local community; no one should have land that exceeds fifty acres while other people in the area don't even have an acre of land," she said. She also wanted the National Park to go back to being a Game Reserve; a prime minister who would be leader of government; the president to be a 'ceremonial president'; and old people above the age of 65 to be looked after by the government.

Peris Kijala wanted a *Majimbo* system of government, the kind of *majimbo* that does not cause violence. "Because we might be saying majimbo and then bring inequality and violence. It should not bring chaos like it happened some years back in Likoni. That is not good *Majimbo*. Good *majimbo* should follow the law, the constitution and the will of God because God made these boundaries." We should live according to the "tribes" we have been given because it was the plan of God. That is why he planned the Akamba to be in their own land where they understand each other. And the Wataita were put together in their own land. The same with the Agĩkũyũ and even the Europeans. That is why we were even given different races. Those differences should be respected."

Peris also addressed the rights of women and girls. She noted that the girl child suffered because she lacked the basic rights. That was because the girl child did not even have the right to inherit land from her parents. She did not even get a goat because she was a woman. But the man had the right to inherit from the parents. "That is why I want the constitution to be reviewed because it is the same parent who gives birth to the boy as well as to the girl. Both of them should have equal rights. Both are children who were born after nine months in the mother's womb. None stayed in the womb for one month only."

On Friday, May 3rd 2002, I was in Mwatate at Kenyatta High School

I was with Commissioner Keriako Tobiko. It was very well attended and many women had an opportunity to present their views.

Rebecca Chori Mwamburi was among the women who presented their views.

In her presentation, she wanted title deeds to be in two names—that of the husband, and that of the wife; free education and health services; markets for farm products to be near the farmer; and a limit to ownership of land by foreigners. She said that 80 per cent of the resources and profits from Tsavo National park should belong to the local people of Taita. Taita Sisal Estate should also pay a tax of about 50 per cent to the people of Taita. She wanted the local community to benefit from the products of their forests such as: medicine, glue, wood and other products. “Benefits from our mineral resources should ensure that 50 per cent of the profit is put to benefit the local people and 70 per cent of the profits got from the Kenya Ports Authority to go to the Coastal people,” she said.

Clara Juma, a councillor for Chavia Ward and a politician for Mwatate Constituency: wanted free education, and universities to be established in Coast Province; free health care; all land in government hands to be given to the community; and the citizens to have the title deed. Also, about 70 per cent of the profits raised by the council to remain in the county council and the remaining 30 per cent to go to the central government in addition to three political parties and special seats for women of at least 35 per cent.

Elizabeth Madoka wanted money to be devolved to local authorities so that poverty could be reduced. “Local authorities should know how to better distribute the money among the people to cater for education, health and other amenities; the president should only serve for a maximum of two terms. No need for a prime minister and a vice president to be elected by the people to work together with the president.”

Esther Mwombo, chief for Chavia Location, wanted all government employees to retire at the age of 45 years to give room to young ones; natural resources to be managed by the local government and 70 per cent of the profit to go to the local people. She also wanted free education and access to health.

Eunice Nyasi, who is a physically challenged Kenyan, wanted employment for disabled people and accessible telephone booths.

Joyce Mwangoji rooted for the Affirmative Action for women in parliament and local authorities and other representative offices, gender equality and nominations for members of parliament or in the local authority. She also wanted an electoral court which would deal with election petitions

and mayors and council chairpersons to be elected directly by the people.

In addition, she wanted, “Any spouse of a Kenyan citizen to be given Kenyan citizenship, women to have the right to own property and Affiliation Act that used to look into the issues of children born out of wedlock brought back. “It was removed in 1967 and we want it back,” she said. On elections, she rooted for elections for councillors and members of parliament to be held differently from the presidential elections; votes to be counted at the polling station and the results announced immediately; ballot boxes to be transparent; and a limit to the amount of money spent in campaigns. On land, she wanted girl children, whether married or not, to inherit property; title deeds for family lands to be in the names of both the father and mother; protection for the marginalised; minority groups’ rights; and protection of women from rape and other gender based violence.

Henrita Shali wanted the people of Mwatate to control their natural resources including the sisal farm, game parks, game reserves and so on. She also wanted the powers of the president to be reduced; women to be appointed to positions of leadership; government to offer free health services; and free education.

Elizabeth Mwabingu wanted natural resources to benefit local people. If it is possible, some percentage of the profit got from the natural resource to go to the local people in that location. On land, she wanted title deed to have the names of both the husband and wife as well as the children where possible, and women’s rights to be entrenched.

Lilian Nzano from Zingila village wanted free primary education and secondary education. She also wanted “equality between men and women.”

Violet Nyambu presented the views prepared by the leaders of Mwanabogo Division, about 40 citizens. The group wanted the constitution to be in Kiswahili; a devolved government both economically and politically; the land in Taita to be used by the Taita people only and people to be given the right to distribute the land amongst themselves; Taita ranches to be controlled by the Taita people; part of Mzima Springs water to come to Taita Taveta especially in Mwatate so they could use it for irrigation; the powers of the president to be reduced; a prime minister who would be leader of government business; provincial administration to be abolished; chiefs to be elected by the people and to serve for a maximum of two terms; judges not to be appointed by the president; the voters to have the right of recall for councillors and members of parliament; health services to be free; and the president not to be elected together with the members of parliament and councillors. There should be a day

set aside to elect the president after election of members of parliament; and councillors, members of parliament voted in by the people not to be appointed as ministers; rights of disabled children; women's rights to be enshrined in the constitution; and village elders to be paid.

In yet another constituency public hearing held at *Matuga Constituency in Shimba Hills Secondary School on May 2nd 2002*

Sarah Mutuku was among many women who had their say. She was a civic education provider in Mangawani Location. She presented the views on behalf of women of Mangawani. She said women wanted to inherit their husband's property; and abortion not to be allowed.

Grace Ndunge Mwendwa wanted the constitution to protect women from sexual harassment and discrimination, maternity leave for women; payment for village elders; and better distribution of resources.

Zeinab Tchizuga, a committee member of Matuga Constituency, wanted the constitution to deal with corruption and ensure *Majimbo* system of government; foreigners who come to the Coast to live together with the locals in respect, and peace to develop the Coast region. She wanted 85 per cent of Coast Province earnings to go to the Coast Province and 15 per cent to the Central Government. That percentage to also apply to jobs. She believed that the *Majimbo* system was the most appropriate. "If the president is a man, the vice president should be a woman; we should have a prime minister and governors who will lead various *majimbos (regions)*," she concluded.

Mary Wambua wanted the problem of wild animals and the conflict with people to be addressed and employment for the youth.

She continued: "I would want the law to punish those who are trying to marry off their young daughters because if you marry off or marry an underage girl, you ruin her future. Maybe that girl would have been tomorrow's leader or a professor and you have wasted her chances early." Mary wanted a law that allows women and girls to inherit property from their parents saying there was no difference between the girl and boy child; and protection of married women by the law. In addition, both young men and women to have equal opportunities to jobs.

Damaris Mbaka's view was that there should be free primary education and facilities for the education of children with disabilities.

Beatrice Mwamzuka from Mwanamkuu Village presented the views of Mpango Women Group and the women of Mwaluvanga Location. They wanted the powers of the president to be reduced. To them, the president should not be a member of parliament; and women to have an equal number of seats in parliament with men. They wanted governance to be

closer to the people, “We are very far from the government. Our views as the women of Mwaluvanga Location are that a certain percentage of money should be given to the county councils.”

The group also wanted free primary education; health services; and women to be able to inherit land.

Joyce Ngitu on her part, wanted access to markets for their products.

Margaret Odada from Majimboni wanted free primary education. “The government should investigate how it can help the oppressed because God did not create us equal. There are those who are poor and those who are rich.” She wanted women to be equally represented in leadership; a government close to the people and resources to be equally distributed.

Kwale County Hall, Matuga on May 3rd 2002

Many women turned up to give their views.

Agnes Mnyapara, a resident of Kwale town. She did not want any religion to advocate for divorce, be it Islam or Christianity, because “it is the children who suffer,” she also wanted separation of state and religion. On property, she said she wanted Kenyans to own property if it was legally acquired; if it was a piece of land, the person should be given the title deed because he/she had bought it. She also wanted an independent judiciary because “sometimes you get somebody who has done wrong and then the central government gets involved in the matter.” She wanted family property to belong to both husband and wife; and corruption to be eradicated: “We reject the habit of a man marrying a woman then making her work for him like his donkey, cooking for him every time; yet, he keeps beating her.”

Fatuma Mwanyuchi, the chairperson and a member of Maendeleo ya Wanawake in Kwale District, wanted a new constitution that would give the country a government that would not be greedy like the one we had then, where members of parliament were earning hundreds of thousands of shillings a month when there were people suffering there at the grassroots. She wanted a woman’s ministry, a transparent government that would deal with HIV/AIDS, poverty and provide special schools for the orphans and the needy in every location; election of chiefs by the people and if the chief and sub chiefs did not deal with women’s issues, then they should be transferred.

Riziki Mwachai from the Women Development Group wanted that if a person had lived on the same piece of land for more than twelve years, they be given ownership of the land and stop being called a squatter for life. She also wanted equal opportunity for jobs. “Sometimes, there are recruitments of police officers but here in Kwale, the powerful positions are given to outsiders and our children are sent back home,” she said.

We want Coast Province to also be represented in government jobs and not just the people from the rest of Kenya. In the new Constitution, we want Muslims to be allowed to take Friday off every week, if not for the whole day, at least for half a day on Fridays. "It should not be that they work on the day of worship."

Rehema Matemo, chairlady of a women group said, "We, the people of Coast have no powers. Even the leaders that we elect are not given the opportunity to speak for their people. That is why we want the *Majimbo* system of government so that we can at least be happy. Here, we have forests, hotels and other tourist attraction sites but we do not know where that money is going."

Amina Mwaronga, who was representing a women group called National Commission on the Status of Women Kwale Branch, wanted *Majimbo* system of government and if that did not happen, "then we should have a mainland Kenya and a Coastal Kenya. In addition, if the president is a man, then the vice president should be a woman and special seats that only women will vie for so that there are more women in parliament. There should be a ministry in charge of women and children issues whose minister should be a woman. The nominated councillors should be women who will take care of women and children issues as well as the issues of the disabled people; salaries of members of parliament to be decided by the people. Chiefs and sub-chiefs to be elected by the people. Women also want any child born by a Kenyan parent either outside the country or in the country to be a Kenyan."

She continued to say that members of parliament should only serve for a maximum of two terms. "Whether he/she is doing a good job or not, they should go home after the expiry of their term and let another one come in. Representation in parliament should be divided equally between men and women. In addition, women want mayors to be elected by the people, all nominated councillors to be women so that they should fight for the rights of women, children and the disabled; the election system to be changed to enable more women to go to parliament and other local councils. There should be special seats for women and persons with disabilities. In addition, women want election days for councillors and for members of parliament and election of the president to be on different days. "Women and men," she added, should be able to own property in their place of origin. Both men and women should have equal inheritance rights. A law to protect the environment and natural resources should be enacted, resources should be controlled by the local governments, and all forms of discrimination should be abolished."

Mariam Juma Sheba wanted free nursery, primary, secondary and university education. Other recommendations from her were: introduction of the *majimbo* system of government, "not the kind of *majimbo* where we are

told that the people from the mainland to stay on their mainland only and those from the Coast to also live on their Coast land only. We want the kind of majimbo where any Kenyan can live anywhere in Kenya. What we want is that as people from the Coast, if there is a tourist hotel being built, 75 per cent of the workers should come from this region; women to have equal rights, 'if the leader is a man, then the deputy should be a woman'."

Amadi said she wanted Kadhi's offices to be up to the location level so that cases of marriage and divorce were not dealt with by the chiefs. Also, "if the president is a man, then his deputy should be a woman. The same case to be with mayors, chairpersons and village elders." She wanted nominated members of parliament and councillors to be women; life sentence for rapists; title deeds to be in the names of husbands and wives; girls and boys and those born out of wedlock to inherit the mother's property and not the father's; a woman who is not legally married to a man to not inherit that man's property; people to elect chiefs and the village elders.

Mwaviriko said, "I would want 75 per cent of the workers to be from the coast and other 25 per cent to be people from other places; free education from nursery school to secondary school; and women to have the same rights as men. If we have a male leader, the deputy should be a woman, 'if you live with a man for more than three months, then he should marry you and if he refuses, then he should be prosecuted.' She also wanted rights of the disabled to be respected and support for the elderly to be provided. 'I would like the government to be giving people above the age of 50 some little money each month irrespective of whether the elderly person used to work before retirement age or not'."

Mwanakombo wanted the government to build tourism colleges and a university for Coast Province and equal representation of people from the Coast at all levels.

Kauchi Chivumba, a representative of the National Council of Women of Kenya summarised it all. "We have talked about children and women. On women, we have talked about the Bill of Rights, women's participation in the legislature and local authority. We have also talked about governance and decision making as well as the state. We have talked about family protection and children's rights, property and land rights, elections, local governance, sub-station, citizenship and public finances. Women want the constitution to ensure citizenship and children's rights, basic rights, right to education, protection from abuse and exploitative measures; special constitutional offices for protection of children; access to justice by children as well as governance. In addition, women want free primary, secondary and university education; right of mothers to confer citizenship to their children; protection of young girls

from early marriages and punishment for those who marry off girls who are under eighteen years old. They also want all children to have the right to inheritance, reduce poverty, allowance for jobless people; punishment for those people who defile children, persons with disabilities and the elderly; homosexuality and homosexual marriages to be banned, barren women not to pay dowry for fertile women so they can bear children for them; no beating or injuring of wife; protection of children against all forms of violence; land ownership for Kenya citizens; and no Kenyan should be a squatters. The new constitution should make sure that anyone who infects another, intentionally, with a fatal disease like HIV/AIDS be prosecuted and given a harsh sentence or even life imprisonment; Kiswahili to be the national language and English to be the official language. The new constitution should be written in both Kiswahili and English. These two languages should be easy to understand; and constitution to be taught in schools.”

Section Summary

Clearly, women from the Coast Province had their focus on their concerns and that of their communities. These concerns include: control of resources by the local community; strengthening of local authorities; education; health and poverty reduction; reduction of powers of the president; improved electoral system; Affirmative Action for women's representation and safeguarding women's rights; access to and protection of natural resources; education; women's rights; land; federal (majimbo) government; land inheritance; a devolved system of government; and HIV/AIDS issues to be addressed, among other issues.

Many presentations by women show:

- The sense of marginalisation of the Coast Province people and their alienation from the land and other resources. Women articulated this strongly and gave recommendations.
- That the Majimbo system of government, clearly articulated by the women as well as the men, is a response to the exploitation of resources by the central government which was seen as sitting in Nairobi. The desire for equitable distribution of resources was evident.
- That Coast Province women, like their male counterparts, wanted to be governed by a system that was closer to them which respected Coast people and let them have what was rightfully theirs without excluding people from other parts of Kenya.
- The issue of women's rights; women's representation, land inheritance, equal treatment of boys and girls, of child abuse, domestic violence among others, were well articulated by the women from the Coast.
- Issues concerning persons with disabilities, orphans and elderly were also addressed.

- It is also noteworthy that the civic education carried out by women's organisations was very comprehensive. The National Commission on the Status of Women and the National Council of Women of Kenya presentations were very detailed and covered many other issues outside of women's specific issues that were a major focus for women in Coast province. In addition to these, Coast women addressed:
 - Poverty;
 - Education of girls;
 - Teenage pregnancies;
 - Inheritance;
 - Equitable distribution of resources;
 - Basic needs like water, health, education, food and shelter;
 - Management of natural resources;
 - Equality between men and women;
 - Women's representation;
 - Equal application of the law to all offenders;
 - Freedom of the press, access to control of natural resources;
 - Spread of national institutions like universities, colleges and high schools to the various regions;
 - Affirmative action for women's representation as well as for persons with disabilities and no corruption; and
 - Issues of good and transparent governance.

It was clear that women's networks were very well prepared for the hearings in the Coast Province. It is also noteworthy that women's CBOs were well prepared too and that many women spoke from both the heart and their head.

Chapter Summary

We have highlighted issues raised by women at a number of constituency hearings in all the eight provinces (now 47 counties). Harvesting these views from women at grassroots level was a joyous but painful exercise. It was painful because a majority of them were poor women. You could see hopes in their eyes. You could feel their expectations and you did not know how these dreams would be realised.

It was as if women at the grassroots had spoken with one voice; they spoke loudly and clearly. They had emerged from the shadows of silence; of marriages that oppress them; of social cultural and political oppression to put their agenda on the table. There were many constituency hearings and presentations from national organisations, from the private sector, trade unions, CSOs, and CBOs in the provinces. It is our hope that these views from women of this country will provide a

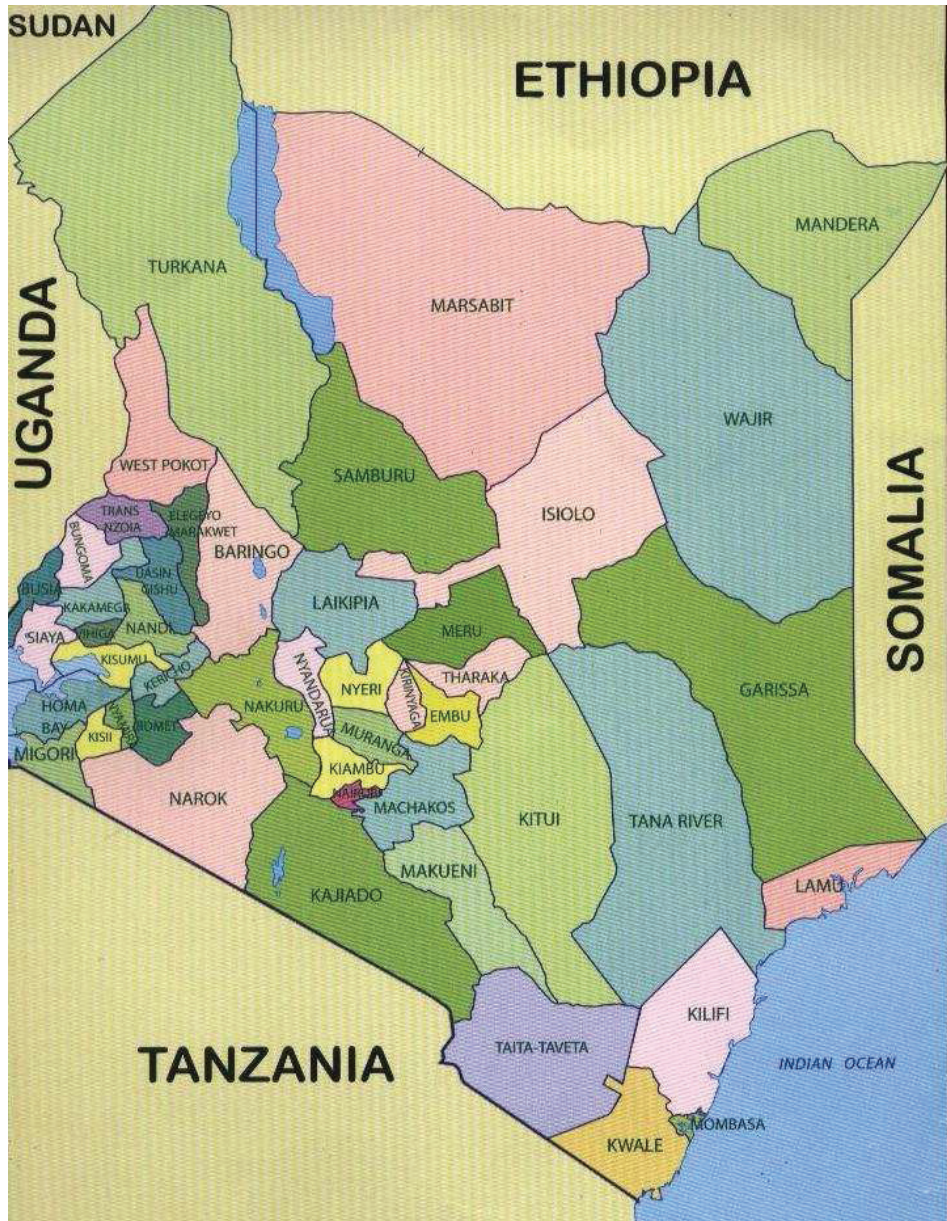
starting point in helping us bring women's perspectives and experiences into visibility and public knowledge.

From Garsen in Bura, to Mandera on the border with Somalia, to Nyando the land of Nyamgotho, next to Lake Victoria and, Kilifi bordering the land of Mekatilili and the late Maggie Gona, from the Indian Ocean, to the belly of Mt Kenya, the home of Ciokaraine and the foot of Mt Elgon, women spoke the same language, sang the same song and told the same story. Oppression and want has created a common bond, among women. Their experiences were the same, experiences of poverty, of women's marginalisation, of powerlessness, of alienation, but of dreams too, for a better social order. The women from all these lands emerged from their shadows and told their stories.

But apart from constituency hearings covered in these eight sections, women's organisations and those in academia presented their views at other fora. Chapter 5 highlights their views. Many women, thousands of women, infact millions of women presented their views, either as individuals, women's groups or through women's organisations, political parties, faith-based organisations among other groups. What is presented here is an assortment of voices and even then as summaries.

Kenya's 47 Counties

The New Constitution of Kenya created 47 county governments. Below is a map of all the counties and their boundaries.



Map 2: According to the New Constitution that came to effect on August 27th 2010, Kenya is now divided into 47 counties

Courtesy of Softkenya: <http://softkenya.com/county/files/2011/08/Kenya-County-Map.jpg>

The first schedule: article 6(1) the counties

- | | |
|--------------------|---------------------|
| 1. Mombasa | 25. Samburu |
| 2. Kwale | 26. Trans Nzoia |
| 3. Kilifi | 27. Uasin Gishu |
| 4. Tana River | 28. Elgeyo/Marakwet |
| 5. Lamu | 29. Nandi |
| 6. Taita/ Taveta | 30. Baringo |
| 7. Garissa | 31. Laikipia |
| 8. Wajir | 32. Nakuru |
| 9. Mandera | 33. Narok |
| 10. Marsabit | 34. Kajiado |
| 11. Isiolo | 35. Kericho |
| 12. Meru | 36. Bomet |
| 13. Tharaka –Nithi | 37. Kakamega |
| 14. Embu | 38. Vihiga |
| 15. Kitui | 39. Bungoma |
| 16. Machakos | 40. Busia |
| 17. Makueni | 41. Siaya |
| 18. Nyandarua | 42. Kisumu |
| 19. Nyeri | 43. Homa Bay |
| 20. Kirinyaga | 44. Migori |
| 21. Murang'a | 45. Kisii |
| 22. Kiambu | 46. Nyamira |
| 23. Turkana | 47. Nairobi City |
| 24. West Pokot | |



Women's Organisations and Women in Academia

Introduction

Time for Harvest is also the story of women's organisations from 1992 – 2010. In all ways, women's organisations shaped the agenda for women in the new constitution. Extensive reference to the women's organisations in their different roles as: negotiators of the process, setting the agenda, promoting dialogue, presenting views through constituency forums and in carrying out research, is reflected throughout the text. In addition, women's organisations ensured that they were part of the civic education for constitutional review process and in so doing, the women's agenda was at the centre of the civic education programme. Women's organisations also lobbied to have other civil society organisations, religious organisations, and political parties, to mainstream gender in their own programmes. After the process, women's organisations developed their minimum agenda at various stages of the process. This chapter captures some of the presentations prepared, shared and presented during the collection of the views. The chapter also covers the views of women in the academia, who though they did not set the pace for women's agenda in the review process as a group, nevertheless, had their say at different times in the process.

Voices from national women's organisations

In our presentation of the views of women in the eight provinces (now 47 counties), we have discussed many presentations from national women's organisations at the provincial level. Women's organisations did not take any chances when it came to the presentation of their views to the Constitution of Kenya Review Commission (CKRC). As can be observed from Part I of this book, women's organisations at the national level were the drivers when it came to negotiating for women's participation in the process of reviewing the constitution. They organised to present collectively and individually at the national level and at the constituency hearings through their grassroots

networks. They were not going to leave any stone unturned, having gone through the process of negotiating and lobbying to be part of the process.

Many of the women's organisations met and agreed on most of the issues. They also shared the same with their affiliate CBOs at the grassroots level. This ensured that, on critical issues specific to women, they spoke the same language countrywide. CKRC reports show that in almost all the constituencies, the issue of 30 per cent women's representation, land inheritance, and others were raised by women individuals, CBOs and women's organisations.

This section covers the issues that were presented by the National Women's Organisations. Some of the issues were tabled before the Commission Offices while others were tabled at various national meetings held in Nairobi. Women's organisations presented detailed memoranda both at the headquarters, that is, the CKRC offices at KenCom and at City Hall. They also presented their views at the provincial headquarters and through their affiliates at the constituency level.

Among the national women's organisations that made presentations to CKRC in 2001 were: Maendeleo ya Wanawake (MYWO), Women's Political Caucus (WPC), Women's Political Alliance of Kenya (WPAK), League of Kenya Women Voters (LKWV), Federation of Women Lawyers – Kenya (FIDA-K), National Council of Women of Kenya (NCWK), Widows and Orphans, and Collaborative Centre for Gender and Development (CCGD). This section highlights presentations from some of the organisations.

1. Maendeleo ya Wanawake Organisation (MYWO)

In a memorandum presented by Maendeleo ya Wanawake to CKRC for instance, the organisation wanted the constitution to:

- Have a very specific, clearly worded, well defined preamble that ensured that equality under the laws of Kenya was properly prescribed, very air tight and sealed with very specific modes/guidelines for enforcement;
- The rights to equal protection and benefit of the laws without any discrimination or ambiguity be enshrined in the new constitution;
- Ensure freedom of conscience, thought, religion, expression, peaceful assembly and association and the right to settle and own property anywhere in the republic of Kenya without any discrimination as to ethnicity or gender.
- Ensure use of concepts that are gender sensitive in order to bring about the required attitudinal changes. Whatever is intended should be clearly stated and should not be left to different types of interpretations that would invariably defeat the intentions of the laws by the court.
- Outlaw social, economic, cultural and historical practices that have continued to limit women's freedom and equal access and

participation in the development process of this country thereby reducing their continued absence of representation, even where they are equally qualified, able, and merit to do so, in decision making bodies/levels. The constitution should recommend corrective measures to reduce gender imbalances in these areas;

- Ensure that the principle of equality of men and women was, this time around, clearly and specifically embodied in our constitution;
- Ensure that there was no form of discrimination against anyone on the basis of gender, sex, pregnancy, marital status, culture, language, birth, ethnic or social origin, race, class, disability, age, religion, belief, etc.

On cultural diversity, ethnicity, religious and communal rights, MYWO wanted:

- The constitution to draw a balance whereby negative cultures do not unnecessarily hinder, harm and act as obstacles to people especially women and girl's enjoyment of their inalienable human rights and development;
- Culturally practices harmful to the health and well being of the person, especially those that have perpetuated the oppression of women and girls in particular, such as inheritance of widows and female genital mutilation to be outlawed;
- Widows and widowers to remarry out of their own choice and preference;
- Girls and boys of below 18 years old in accordance with the Children's Act be not circumcised against their will;
- There be mandatory testing requirements for HIV&AIDs and STDs over a number of months, before a marriage can be solemnised;
- There be mandatory health insurance policy/scheme subsidised by the state to ensure good health and medical treatment to cater for or cover the whole population especially the elderly and low-income families.

On good governance, MYWO wanted:

- The constitution to ensure that the principle of gender equality and/or equity was applied in appointments of sub-chiefs, chiefs, councillors, etc. There be a set criteria to ensure that a certain percentage of elective posts went to women;
- The state to be entrusted with the duty and responsibility of ensuring and maintaining an enabling environment where every Kenyan could feel safe and protected to participate in politics;
- The constitution to streamline the election process in order to prescribe and fix election dates and the amount of money that could be spent on a particular election. The Electoral Commission to be a truly representative, independent and neutral body in the processes of these elections;
- There be clearly prescribed and easily enforceable rules to make these elections free and fair in order to restore dignity to our country;

- In situations of ethnic differences, dialogue and peaceful conflict resolution through mediation and arbitration be immediately encouraged. The bodies entrusted with the above to include women.

On child education, MYWO wanted:

- The constitution to outlaw practices usually based on cultural traditional practices that, perpetuate discrimination against the girl child in education and society; practices that support and lead to early pregnancies; forced and or child marriages of the girls;
- The constitution to ensure the existence of universal compulsory and mandatory primary education for all children; boys and girls alike.
- Ensure that right to education and information evolve as a human right.

On land and property ownership, succession and inheritance rights, MYWO wanted the constitution to:

- Clearly address the concept of ownership and custody in matters of land/property control, access and management as well as the element of joint ownership where applicable, as in marriages or co-habitation;
- Ensure the rights of women as individual persons were enhanced and duly recognised; their rights not to be left in the hands of the father, brother and or husbands and sons with the unwritten assumptions of “being looked after”;
- Should a state happen to have a first lady in the state house, her contributions be spelt out and be duly recognised as her human rights;
- The principle of gender equality be applicable on issues of inheritance, administration and management of estates and ownership of property. The recognition and protection to the inheritance rights to be taken into consideration in equitable basis, rights of widows, their children—girls and boys in equal basis. The rights of orphans, especially those relating to inheritance, to be protected, guarded and apply equally to both boys and girls;
- The constitution should guard against male dominance and manipulation in ownership of property left to widows and orphans.

On family, the organisation wanted:

- The constitution to ensure, recognise and enforce the responsibility of parentage and the security of the defined family units;
- Women as well as men to be accorded the protection and security to family benefits that can ensure their livelihood;
- The constitution to establish parentage affiliation responsibility to children and or a mechanism for social security benefits for all who might need it;
- Equity on issues relating to marriage, separation, divorce, custody of children and marital properties, succession and inheritance from fathers and husbands;

- The ambiguities in the constitution to be repealed. This applies especially to those that have led to negative interpretations of the constitution—the laws of the country that have perpetuated colonial mentalities that are the basis of our statutes and are discriminatory to women and children;
- Spouse and child abuse to be criminalised. In particular, a girl's/woman's decency and privacy should not be violated through battery, physical and psychological abuse, forced female genital mutilation, sexual harassment, rape and incest.

On citizenship, the organisation wanted:

- The constitution to ensure that the spouses of Kenya citizens regardless of gender would be entitled to Kenyan citizenship should they wish to acquire it. Women, like men, to be able to accord their foreign husbands an opportunity to become Kenyan citizens; a child born of a Kenyan parent (woman or man) to be entitled to Kenyan citizenship regardless of their parental gender;
- In a marriage, both parents to have equal rights over the children, offspring of the same marriage and parentage;
- A passport to be issued to every Kenyan citizen as a right and not as a favour;
- Dual citizenship, especially to children, be allowed so as to encourage ease of movements and residence;
- Gains produced by international/women activism (the convention on the elimination of all forms of discrimination against women, and the convention on the rights of the child) to be domesticated, sustained and maintained by well innovated structured mechanisms and supportive laws and policies supported by the constitution.

On public utilities, MYWO wanted:

- The development of common public utilities and basic infrastructure e.g. roads, water, energy and forms of communication to be well planned and carried out professionally to achieve balanced development for the whole country without favours;
- Public facilities such as bathrooms, recreation grounds e.g. swimming pools and other public amenities to be viewed as people's rights and be available to women, disabled and the elderly people as well;
- The needs of the elderly and the disabled to be considered especially in public utilities and modes of public transport e.g. buses, trains etc;
- The right to freedom, security and safety of all persons who would use such facilities to be of outmost consideration in the design and maintenance (provision of security guards in the facilities);

On environment and natural resources, MYWO wanted:

- All bodies managing the environment and natural resources to have half representation of women to ensure gender parity and to ensure

proper consideration of issues relating to environment in decision making process.

On other issues, MYWO wanted:

- Protective legislation that can ensure that the imbalances in opportunities in societies and between ethnic groups, men and women were eliminated in line with the acceptable.

2. *Collaborative Centre for Gender and Development (CCGD)*

CCGD presented a memorandum which they had prepared with the following organisations: National Council of Women of Kenya, Widows and Orphans Women Association of Kenya; ABANTU for Development; AMKA Space for Women Creativity; Federation of Women Groups; Friends of Esther and Deborah (FREDA); Grassroots Women Association of Kenya; Kenya Professional Business Women's Club-Kenya; Alliance on the Advancement of Children's Rights; Kenya Oral Literature Association; Muslim Sisters Network; Women's Political Mobilisation Network; and International Federation of Women Lawyers-Kenya.

In the memorandum, they had the following proposals:

On Bill of Rights:

- Enshrine equal access of resources and equality before the law to men and women, boys and girls without discrimination;
- Security and equal protection for both men and women;
- Recognise the diverse groups that constitute Kenya in all aspects of life;
- Guarantee women's rights under the bill of rights.

On governance and decision making:

- Proportional representation should be used to ensure at least a third of women's representation in all constitutional offices, organs and structures including national assembly and local authorities;
- Institutional mechanisms for the advancement of women such as the gender commission;
- The principal of gender balance should be adhered to in the composition of all offices and governance structures;
- Domesticated the international conventions that Kenya is signatory to and has ratified such as the United Nations Convention on the Rights of the Child and the Convention on the Elimination of Discrimination Against Women (CEDAW).

On the State:

- Separation of powers of the various organs of the state so that each is autonomous;

- Devolution of power in all government structures to allow autonomous local authorities and the participation of local communities;
- Equal participation of women and men to ensure that women's experiences, knowledge and perspectives are mainstreamed;
- Elimination of all forms of discrimination on the basis of gender in recruitment, appointment and training in the disciplined forces and all other institutions of governance, bearing in mind the different needs of women and men.

On family protection and children's rights:

- A clear definition of "child" as any person below the age of 18 years and protection of children's rights;
- No discrimination on the basis of age, sex, language, colour, religion;
- Provide education, leisure, recreation and cultural activities for the development of the child and pay special attention to girls, children with disabilities, refugee children, those in armed conflict, children in conflict with the law, children marginalised on economic, social or political reasons;
- Recognise and domesticate in the constitution, conventions on children's rights that Kenya is signatory to.

On property and land rights:

- Establish a constitutional land commission in the constitution;
- Recognise the convention on the elimination of all forms of discrimination against women in the constitution;
- Recognise and protect the inheritance rights of widows/widowers, girls with disabilities and orphans;
- A limit should be set and spelt out on how much land individuals should own and the taxes to be imposed on land that remains idle after a stipulated time period;
- The constitution should clearly provide for the protection of forests and all natural resources.

On elections CCGD proposed:

- Constitution should specify that at least a third representation of women and other marginalised groups be made mandatory for all elective posts;
- Take measures to ensure that the electoral process puts in place mechanisms that ensure that political parties integrate women in both elective and non-elective positions in the same proportion and at the same level as men;
- Provision for independent candidates;
- Civic education should be stepped up;
- Provision for a code of conduct that governs the elections in order to eliminate violence;

- Institutionalise regulation and management of political parties and ensure that they receive state funding. Gender considerations should be one of the indicators for ensuring parties qualify to receive these funds;
- Government should regulate election expenditure.

On local government:

- There was need to vest power in the local governments so that they become autonomous entities which can provide efficient and quality services and ensure power and control of local resources by the local people;
- Ensure democratic and transparent local governments;
- Create structures that enable a democratic participation of all communities, especially people from marginalised groups in decision making at all levels of local government;
- The principle of at least one-third representation of one gender should be entrenched in the constitution to ensure gender equity in local government;
- There should be direct elections of mayors by universal suffrage.

3. *Kenya Women's Political Caucus (KWPC) also presented their views to the commission and emphasised that:*

On the preamble:

- The preamble should highlight the need for patriotism, a sense of unity, tolerance in diversity, justice, peace, liberty, equity and respect for human rights.

On governance:

- The constitution should ensure democratic governance that recognises the supremacy of the will of the people;
- Ensure that the different structures of government provide checks and balances;
- Affirmative Action for women's representation in all institutions of governance including: judiciary, executive and legislature.

On devolution of power:

- Devolution of power should be established in order to ensure peoples' participation in decision making processes;
- Ensure peoples' control of local resources;
- 35 per cent women's representation in local authorities.

On citizenship:

- The need for both men and women to be conferred dual citizenship;
- Both men and women to confer citizenship to their spouses.

On representation of the people:

- Affirmative Action: at least 35 per cent seats to be reserved for women in parliament, local government and other public bodies;
- The electoral systems should ensure women's representation.

On rights and freedoms:

- The constitution to ensure protection of women's rights and freedoms and outlaw all forms of discrimination on the basis of gender, culture or race.

On security:

- Provision of security for all Kenyans;
- Protection against gender based violence among other security issues.

On political parties:

- Political parties and the need for them to adopt Affirmative Action for women's representation;
- Financial support for political parties by the state.

On rights of vulnerable groups:

- Rights of vulnerable groups to be entrenched in the constitution;

On land and property:

- Ensure land and property rights for both men and women, inheritance by both boys and girls, among other issues.

4. *Women's Political Alliance of Kenya (WPAK) presented their views to CKRC in Nairobi on January 21st 2002.*

On Affirmative Action:

- The principle of Affirmative Action should be entrenched in the constitution in order to ensure at least one-third women's representation in all decision making positions.

On the executive:

- The powers of the president should be reduced;
- Establishment of the position of a Prime Minister.

On Local Government

- Devolution of power to local Government should be established by the constitution;
- Affirmative Action for women's representation in devolved structures;
- The need for the lower levels of government to be autonomous;
- Capacity of local structures to control local resources.

On representation:

- women's representation by at least one-third in all structures including parliament, devolved government and other public offices.

On electoral systems:

- Proportional representation as an electoral system that would ensure fair representation of women and better representation for all;
- Facilitation of women participation, independent candidates, financial support for political parties;
- Affirmative Action for women's representation in all electoral bodies and in appointive positions.

On marginalised group's rights:

- Protection of rights of the minorities and marginalised groups;
- Representation of marginalised groups and minorities in all decision making positions.

On citizenship:

- Dual citizenship to be allowed;
- Equal rights of men and women to confer citizenship to their off-springs;
- Equal rights for both men and women to confer citizenship to spouses.

On Land and property:

- Land and property rights for women to be enshrined in the constitution;
- Rights to inheritance for both boys and girls;
- Equal rights for men and women to property in marriage.

Section Summary

It goes without saying that national women's organisations had clearly studied the agenda, looked at the various themes around which civic education was organised and prepared their presentations along these lines.

The common themes that the women presented on include:

- Affirmative Action for women's representatives at all levels, with clear percentage of at least 30 per cent. This proposal was mainstreamed in all institutions including:
 - Local governments
 - Regional governments
 - Parliament
 - Senate
 - Appointive positions and
 - Constitutional commissions.
- Different rights within the Bill of Rights including; rights of the elderly, social, economic rights, rights within marriage, and reproductive rights;
- Property ownership and issues of succession and inheritance;
- Cultural diversity, ethnic, regional and communal rights, good governance;
- Culture;

- The family;
- Girl child education;
- Citizenship;
- Cultural obstacles;
- Basic needs of water, education, food, shelter, security and health;
- Natural resources;
- Rights of vulnerable groups such as persons with disabilities;
- Gender based violence;
- Gender equality;
- Equitable distribution of resources;
- Electoral law;
- Powers of the president;
- Devolution of power to lower levels of government;
- Rights of minorities;
- Preamble;
- Environment and natural resources, among other issues.

Remarks

Throughout this book, National Women's Organisations appear prominently because they were well coordinated. They strategically took their positions and showed unprecedented clarity which ensured that the draft constitution at all stages took their issues on board. The 2010 Constitution of Kenya is a testimony to the fact that this particular aspect of mainstreaming gender and entrenching women's practical and strategic interests were entrenched. It goes without saying that the views of the Women's Movement were taken on board throughout the process particularly the period between 1998 and 2010. Many women mentioned in Part I of this book ensured that fellow women took every opportunity available to state their views and took nothing for granted through out the process. We must acknowledge that the role of women's organisations, their commitment and steadfastness is responsible for the very gender aware constitution that we have today. Their story is told in Chapters 1, 2, and 3 of this book.

Voices from women in academia

Women in the academic community also had their say. In December 2001, CKRC organised a workshop on the Gender Question in the Review process. It was a well attended workshop where among the presenters were:

Prof. Patricia Kamari-Mbote, University of Nairobi.

Kamari-Mbote presented a paper entitled "*Gender Considerations in Constitution Making: Making a Case for the Recognition of Women's Rights*". In her paper, Kamari-Mbote referred to human rights as a "cluster of claims, powers and immunities" and argued that women, like all other human beings,

are entitled to “all the rights and freedoms” set forth in the 1948 Universal Declaration of Human Rights. She referred to:

- The Convention on the Political Rights of Women (1952)
- The Convention on Nationality of Married Women (1957)
- The Convention on Consent to marriage, minimum age for marriage and registration of marriage (1962)
- The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (1979), among others

Referring to these documents, Kameri-Mbote argued the case for elimination of discrimination in all spheres of women’s lives including cultural, social and political spheres; economic institutions, land inheritance, employment, marriage and family, among other areas. She further reviewed women and the laws in Kenya taking into consideration the following laws: state law, customary law, religious law, international law, domestic law, law of citizenship, and civil law, rights relating to marriage, property law, law of succession, criminal law, and violence against women law and made recommendations.

Kameri-Mbote’s focus was on women’s rights and the law in Kenya, women and the law and the legal framework where she focused on legal pluralism versus legal centralism, intersection between different laws and narrative orders.

Kameri-Mbote concluded that there was need to remove all the impediments that prevent women from realising their full potential; laws had to change in order to address women’s strategic needs and interests. Other concerns included the need to ensure equal rights of men and women by “eliminating de jure and detailed discrimination where it exists”, and noted the need to ensure equal access to the law, ability to exercise legal rights without fear of intimidation, among other issues. She also noted that: the challenge for the Constitution Review Commission was to ensure that the potential of the country’s women did not remain locked up due to legal constraints. “The constitution, as the supreme law of the land, should proscribe discrimination on the basis of sex and provide a framework for remedying past injustices that have affected women enjoyment of rights provided for in the law,” she stated.

It was noted that many issues addressed by Kameri-Mbote in her paper were the subject of debate by women as they presented their views to the Commission at the constituency hearings. It was clear that the women at the grassroots level, those at the academic level, and women politicians were in sync in this review process.

Mrs. Judy Thongori, a lawyer, in private practice, presented a paper on Women’s Human Rights and focused on issues related to security, slavery, torture, freedom of movement and speech, social, political and economic

exclusion of women. She dealt in details on citizenship, equality, the language of the constitution, property rights and laws of inheritance, law of succession, marriage laws, child support and maintenance, violence against women, and sexual violence. She also made recommendations on each of the issues.

Dr. Julia Ojiambo discussed the Women's Movement in Kenya and highlighted the milestones and lessons learnt. She emphasised the need for incorporating women's needs in decision making organs and ensuring provisions that protect women's needs and interests. She highlighted issues related to representation in decision making, the poor economic status of women, unfavourable legislation, social cultural practices, inadequacy of education and the training of girls and women, political parties' insensitivity to women's equal representation in elective positions, and Affirmative Action as a strategy that needed to be taken onboard to ensure increased women's representation in elective bodies.

Prof. Jackline Adhiambo Oduor presented a paper on the social-cultural aspects of the gender question in constitution making and highlighted the need to mainstream gender in the constitution making, Affirmative Action strategy for women's representation, domestication of international laws, the need for institutional mechanisms for enforcing women's rights, outlawing all forms of discrimination against women, abolition of cultural and religious practices that discriminate against women, protection of women from all forms of gender based violence and access to resources.

Hon. Miria R. K. Matembe, one of the women who greatly supported the Kenya women's struggle for constitution making and who was the Minister for Ethics and Integrity in Uganda, spoke of the experiences of women in constitution making in Uganda. She raised issues on the nature and extent of women's participation, education programme and research on women and constitution making, establishment of the Constituency Assembly (CA) in Uganda to facilitate negotiation for their constitution. In addition, Matembe addressed the nature and extent of women's participation in the Constituency Assembly, contesting elections and voting, the work of the CA women delegates, the legal consequences of women's participation, provisions dealing with women's rights and the legal implications and citizenship, among other issues.

Kenyan women who attended this conference, found the sharing of the Ugandan women experiences in constitution making very fruitful. Kenyan women were to borrow some of the strategies as they negotiated at the Bomas Conference.

On her part, Nyaradzai Gumbonzivanda, the United Nations Development Fund for Women (UNIFEM) East African Office Director, who is from Zimbabwe, raised issues related to the international conventions and women's

rights and provided a framework for ensuring gender considerations in the Review Process. She emphasised the importance of details and keeping watch at all times because gender issues keep disappearing from texts. For Nyaradzai, *the devil was in the details*, a statement she kept reminding Kenya women and whose reality they later experienced during the process.

She emphasised that the process was as important as the content—the need to identify what had to be retained. Also, the interpretations of seemingly neutral provisions, gaps that required new law, development of a minimum list of constitutional guarantees on women’s rights, and the development of shadow lobby documents to strengthen women’s voices, among other issues.

Prof. Sister Ann Nasimiyu, focused on “Christian Feminism.” She noted that “Feminism is a call to Christian living and is pro-human....” It was Prof. Nasimiyu’s view that “Feminism is vigorously committed to criticising all institutions which exploit women, stereotype them, deny them rights to actualise their potential and keep them in inferior positions.... It stands for openness, creativity and more dynamic human relations, which enable *her story* and *his story* to form the *human story*.” She argued that a Christian Feminist is a person, a woman, a man who is fully committed to the goals of feminism and recognises the need for radical change, attitudes and structures. She proposed some Christian practices on gender that could be incorporated in the constitution. These included:

- Acknowledging women as moral agents who had to be listened to;
- Ensuring gender equality principles in the constitution;
- Inclusion of Christian Feminists’ critical social analysis that promotes social justice;
- Ensuring that the diversity of men’s and women experiences and world views were captured in the spirit of the new constitution;
- Treating the non-human creation with respect, among other issues.

Dr. Ruth Kibiti, a University of Nairobi lecturer, presented a paper on “Models of Affirmative Action”, a topic that was crucial for women during the negotiations. She focused on the history of Affirmative Action, different models for Affirmative Action, and advantages of Affirmative Action, among others issues. As stated earlier, Affirmative Action for women’s representation had become a rallying call for women. In the constituency hearings, this was the major focus for women.

Prof. Monica Mweseli of University of Nairobi presented a paper on “Gender in the African Traditional Context” where she focused on women’s roles in the African context; genuine sisterhood concepts; respect and recognition of African Women, wholeness and authenticity, respect for elders and adaptability. She was critical of Western Feminism that neglects African

women's traditional roles and African cosmology. She then focused on obstacles in the African traditions that militate against women's rights.

Prof. Maria Nzomo then at the University of Nairobi, and a Political Scientist, presented a paper on "Engendering Governance through Constitutional Review Process." In her paper, Nzomo reviewed the status of women's rights in Kenya, the need for institutional mechanisms for monitoring women's rights, a case for a gender commission, experiences of Affirmative Action in other countries like South Africa, Uganda, Namibia, Argentina, Bangladesh, and Tanzania, among others, and made proposals for legal reforms on the preamble, comprehensive affirmative action law, gender commission, full citizenship, law of succession, employment act and domestication of key international instruments concerning women's rights, among other issues.

Ms. Sauda Namyato from Uganda presented on, "Islam and Women's Rights." She said that Islam recognises the biological and physical differences between the sexes and that men and women are assigned special roles and responsibilities. In addition, Ms. Namyato argued that many Muslim scholars have played significant roles and responsibilities in the Muslim world and that, women cannot undertake long journeys without being accompanied by a male relative. In marriage, a woman has a right to choose her partner, among other issues. She noted that some practices militate against women's rights. These include: restriction of women to move alone in public places without being accompanied by a male relative, men's dominance over women, marrying off girls at a young age, and that, men have the right to marry up to four wives.

Sauda wanted, the constitution to ensure that there was provision for women's freedom of worship, marriage of more than one wife to be after consultations with the first wife, full subjection to Islamic law if married under Islam including divorce and inheritance, age of consent to marriage to be reviewed and women's rights to land to be constitutionalised.

It is noted that some of the issues raised by Ms. Sauda resonated with Muslim women's presentations in the constituency hearings.

Dr. Abullahi Ahmed An-Naim, Professor of Law from Sudan Emory University, Atlanta USA, raised the following fundamental issues:

- The extreme diversity of Islamic experiences, historically and prevailing. Hence claims of uniformity of views on the rights and state of women in Islamic societies and communities needed to be reviewed.
- That like all other human beings and societies, Muslim beliefs and practices were influenced by a variety of social, economic, political and cultural factors and processes.
- The need to appreciate that the history of the Women's Movement in Islamic countries was diverse and that the social, economic, political

and cultural factors influenced the ability of women's organisations and groups in advocating for their rights to equality and social justice. He gave examples of Malaysia, Bangladesh and Pakistan as compared to Saudi Arabia, the Gulf States, Turkey, Egypt, Tunisia, Senegal and Mali.

- He focused on the challenges facing women in Islamic countries and the different ways in which they were rationalised as decreed by Sharia law. He gave strategies for incorporating women's interests in decision making organs and the importance of women's political and advocacy strategies. In addition, he proposed that the interests of women be enshrined in the constitution.

This is not to say that only the academics that contributed to the review process through sharing their ideas but, they will serve as an example of the intensity of the focus on this process by women from all sectors.

Summary of Part II

This is a process where, generally women from all walks of life, from community to national level spoke in one voice. You can tell that the issues of concern from the women in the academic community and those at the grass roots level are similar.

It is very clear that the women's agenda at the public hearings, through presentations by women's organisations and women leaders was very coherent. Issues of land, inheritance, basic needs of water, health, food, security, education gender based violence, traditional cultural practices harmful to women, gender equality and citizenship were in the forefront. In addition, an Affirmative Action proposal for women representatives at all levels, with clear percentage of at least 30 per cent was found to be paramount. This proposal was mainstreamed in all institutions. They also focused on the rights of the elderly, social economic rights, rights within marriage, reproductive rights, property ownership and issues of succession and inheritance, cultural diversity, ethnic, regional and communal rights, good governance, culture, the family, girl child education, natural resources, rights of vulnerable groups like persons with disabilities, gender equality, equitable distribution of resources, environment and natural resources and rights of minorities, among other issues.

Women focused on institutions of governance and made sure that they presented their views on: electoral laws, powers of the president, which they wanted reviewed; the kind of Prime Minister they wanted, devolution of power to the lower levels of government, judiciary and parliament, the senate and constitution commissions.

They were not left behind in presenting their views on the preamble to the constitution and the values that our nation should adopt. A read through many of the verbatim records tells you that women were looking for institutional governance structures that would ensure equitable distribution of resources and promote fairness irrespective of individual and collective rights. It is interesting to note that in areas such as Coast Province, North Eastern Province and other minority community areas, in other parts of the country which, experience a sense of alienation, women reflected the same sentiments. It is also important to note that, at *the women only sessions*, women expressed their thoughts on very personal issues such as domestic violence, low status within the family and alienation within marriage.

I argue that, contrary to societal myth, women want to transform our societies and enhance the potential of men and women to participate fully in their own economic, social, cultural and political empowerment. The stories of women during the constitutional review process were stories of day-to-day struggles. The stories show women's determination to change the world. Women focused on basic needs of their communities, on food, shelter, clothing, education, health, security and representation. It was clear that women, would rather have empowering leaders who practice and preach love such as Buddha, Jesus Christ, Mandela, Martin Luther King and Mother Teresas of this world rather than, have warlords who are persistently shouting war cries.

During this period, women expressed themselves, articulated their needs and participated in one of the greatest moments in the history of Kenya. It is clear that they had identified and named their problems. They had spoken, loudly and clearly, on their problems.

Pictorial II

1. CKRC consultations with stakeholders in preparation for civic education and views harvesting



Commissioners Salome Muigai, Wairimu Mungai and Joyce Majiwa at a CKRC consultation meeting.



Commissioners Bishop Njoroge and Isaac Lenaola at CKRC consultation meeting in Mombasa, 2002.



Ms Nyaradzai, Regional Director UNIFEM, makes her presentation at a CKRC gender and constitution making workshop at Safari Park, 2002.



Ms Martha Karua and Mrs Judy Thongori, at a CKRC meeting in Mombasa making a case for women in constitution making.



The late Prof. Okoth Ogendo, chaired the drafting committee of CKRC.



Prof. Micere Mugo (in head gear) at a CKRC consultation meeting in Rift Valley Lodge, 2002.



Hon. Raila Odinga, Commissioners Nancy Baraza and the Author, at a consultation meeting in Mombasa.



Commissioners: Nancy Baraza, Kavetsa Adagala and the Author at a CKRC meeting in Mombasa, 2002.



From left to right: Commissioners: Prof. Idha Salim; the Author; Kavetsa Adagala; and Dr. Mohammed A. Swazuri, at a consultation meeting in Mombasa, 2002.



CKRC Commissioners: the Author, Kavetsa Adagala, Nancy Baraza, Prof. Idha Salim and Paul Musili Wambua, at a civic education meeting for district coordinators in Mbagathi, Nairobi.

2. Educating the public for the review process



Ms Asenath Nyamu, conducting civic education in Meru, 2001.



Ms Wambui Kanyi, the CKRC District Coordinator, Makadara Constituency, conducting civic education, 2002.



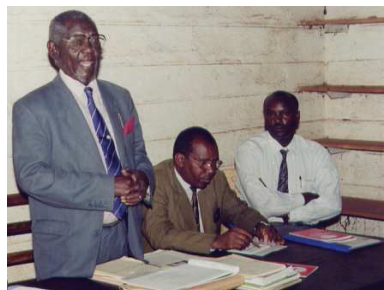
Commissioners: Musonik araap Korir, Dr. Arare Nunor, and the Author, consulting at a training of district coordinators in Mbagathi, 2002.



Commissioners: the Author, Domiziano Ratanya and Paul Musili Wambua educating the public in Embu, 2001.



Councillor Dionesia Muriithi and her team, at a civic education workshop in Embu, 2001.



Mr Matthew Guy Muli, former AG, (standing) addresses the public at a civic education session in Kangundo, 2001.



Ms Abida Ali Aroni (2nd left) and Hon. Chelaite of Rift Valley (centre) at a civic education meeting, 2001.



Women at a civic education workshop in Kikuyu Constituency, Kiambu, 2001.



Women at a civic education session in Kisumu, 2001.



Women at a civic education meeting, in Nairobi 2001.



Women at a civic education session in Central Province, 2001.



Commissioners: Salome Muigai, the Author and Councillor Dionesia Muriithi in Embu County Hall for civic education, 2002.

3. Harvesting the views from the public



Mrs Sarah Wambui, presenting her views to CKRC in Limuru during a public hearing session, 2001.



A CKRC Public hearing in Nyanza Province, 2001.



Commissioners: Abubakar Zein Abubakar and Paul Musili Wambua – receiving the views from the public in Limuru, 2001.



Consultation with women from Eastern Province on the constitution. Among them is Councillor Muriithi from Embu (centre) and Councillor Amina from Isiolo.



Dr. Eddah Gachukia, presenting on behalf of women's organisations at a public hearing session at City Hall Nairobi, 2002.



Ms Jane Kariuki, presenting the views of women to CKRC in Lari constituency, 2001.



CKRC public hearing in Nairobi, 2001.



CKRC public hearing in North Rift Valley, 2001.



Students from Karen C Primary School – presenting their views to CKRC Commissioners in Nairobi.



Women's Negotiations at Bomas National Constitutional Conference (2003-2004)

Introduction

In chapters IV and V, we highlighted the views of the women of Kenya from all corners of the country. Women shared the views which they wanted included in the constitution. They were present in almost every hearing session. As mentioned earlier, the Constitution of Kenya Review Commission (CKRC), through its regulations and in line with the spirit of the Review Act, ensured that both men and women were mobilised to present their views. The women commissioners had spoken in one voice at the CKRC in all matters related to women and in other matters specifically related to Kenyans in general. They, like all other commissioners, tried to reflect the views of Kenyans. At times, there were tense moments at the CKRC. Issues of devolution for instance kept on being postponed and often times, the Attorney General Amos Wako, who was a member of the commission, was viewed as the voice of harmony. He understood the politics of constitution making very well. There were also many court cases, challenging different aspect of the process. Political struggles to defend or control the process were the order of the day. But then, constitution making as we were often reminded was not a legal but a political process; we were reminded of this often by many players. It was about negotiating a covenant between the people and its rulers. It was developing an agreement and therefore could not be an easy task.

Preparation of the CKRC draft and national constitutional conference

Having negotiated the process, collected the views of Kenyans and prepared the CKRC draft, the commission was ready to organise for the National Constitutional Conference (NCC). The CKRC was chaired by Prof. Yash Pal Ghai and later by Abida Ali Aroni. The Technical and Drafting Committee of the Commission was chaired by the late Prof. Okoth Ogendo. He was intellectually alert and was very informed in matters of the constitution. Actually, Prof. Ogendo was the guru of constitutional review matters and

processes. It was his committee that prepared the reports, constituted different technical committees of the members of the commission and guided these committees through analysis of the views and identification of constitution matters and those that were to be left to policy development. Among the sub-committees constituted were:

- Structures and Systems of Government;
- Constitutionalism;
- Electoral Systems;
- Bill of Rights;
- Environment and Natural Resources;
- Defence and National Security; and
- Constitutional Commission.

The CKRC also prepared the detailed National Report whose short version was called “The Peoples’ Voice”. In addition, it prepared the Technical Appendices and other Technical Papers that were to be tabled before the delegates’ conference at Bomas. This process was not without drama. There was a time when it was rumoured that the draft constitution was ready for circulation. We still had not gone to Western Province to collect people’s views, nor had we covered North Eastern Province. There were people who had assumed that the concept of “people driven constitution” was a public relations exercise. To give the commission its due, it took the concept of “people driven constitution” very seriously. This is exemplified by the way they meticulously collected and documented the voices of the people in every constituency in Kenya, without exception, in addition to receiving views from national organisations, faith-based organisations, trade unions, professional organisations, non-governmental organisations and political parties. The CKRC draft of 2002 and the National Report 2002 is testimony to these processes.

After the draft constitution was ready, copies were made and the two leading newspapers, that is, *The Nation* and *The Standard*, carried the whole draft in supplements. All those with access to the dailies could therefore read the draft verbatim. Live Radio programmes from the Kenya Broadcasting Corporation (KBC) and Citizen Radio covered various chapters in all possible languages. Other radio stations like KISS FM, CAPITAL FM, and KAMEME FM carried adverts. There were also discussion programmes on television channels.

Validating the process

The Commission went to the grassroots once again but this time to receive people’s opinions on the draft in what was actually a validation process. After a day or so of studying the draft, constituents would submit comments to the commission. The commission revisited all the constituencies and received people’s views on the draft constitution. Later, CKRC prepared appendices that

were tabled together with the draft constitution and the National Report, to the delegates at the Bomas National Constitutional Conference. It was a very thorough job: harvesting people's views, translating them into constitutional and policy proposals, getting people to validate the proposals through debate and amendments, and finally, tabling the proposals, the amendments and also the National Report for debate by the National Constitutional Conference delegates.

It was the hope of the Commission that the country would have a new constitution before the end of 2002; even if the elections were to be held a few months later. The Commission had prepared Transitional Provisions as well. It had guarded the views of the people and was ready to table them before the delegates. Were the constitution to be completed just before the elections or soon after, it would have been alright since a lot of consultation had already been made. The transitional Provisions had taken care of the constitution transition.

In October 2002, the Commission was at Bomas of Kenya – which we had chosen because of its role in promoting the culture of the various ethnic communities in Kenya and where the initial consultations, which were chaired by the Attorney General Amos Wako, had started in 1998. The Bomas of Kenya venue was a home for all ethnic communities. Believing in our diversity and our richness, we found it a most appropriate place for us to negotiate our co-existence and propose institutional mechanisms for our country's governance.

The CKRC had organised a three-day technical meeting with constitutional experts who had responded to the draft constitution. At the end of this meeting, the CKRC became the National Constitutional Conference Secretariat. So, we put everything in place including the programme and invitation of the delegates who duly arrived and registered. On the eve of the conference however, word went round that Hon. Daniel Arap Moi, the then President of Kenya, had used his powers to dissolve parliament.

With parliament dissolved, one-third of the conference delegates were subsequently no longer delegates. These were the members of parliament who, by virtue of being parliamentarians, were delegates. They were 210 out of the 600+ delegates. Prof. Ghai, however, insisted that the conference would go on, there was confusion at Bomas because word had gone round that the conference had been suspended until further notice. Delegates did not know what to do next. They kept on asking, "Should we come tomorrow or should we not?" Prof. Ghai's views were that the Conference would take place. However, by the end of that afternoon, Bomas did not belong to the delegates anymore. The General Service Unit (GSU), a branch of Kenya's Security Forces, camped at the neighbourhood of the conference ready to forcefully evict the delegates. Prof. Ghai and a few delegates went to Bomas the next day

to test the waters. As expected, they found the gates locked and the security forces ensured that the message was understood: “No conference until further notice!”

Already, members of Parliament were readying for fresh campaigns. Delegates had no choice but to go home. The Commission began dismantling the fourteen tents erected for the fourteen technical committees. We returned to the Commission offices at Ken-Com to think of the next move since the term of the Commission was due to end in January 2003. The Review Act had anticipated that the new constitution would be in place for the country’s 2002 general elections.

Reconvening of the Bomas Constitutional Conference

The December 2002 elections witnessed the overwhelming defeat of the Kenya African National Union (KANU) Government and subsequently, the end of the Moi era. The new year, ushered in the new leadership of the National Rainbow Coalition (NARC) Government led by President Mwai Kibaki. It was a new year of great expectations. These expectations would soon be shattered by the battle between the two sides of the NARC Government, that is, the National Alliance Party of Kenya (NAPK) and the Liberal Democratic Party (LDP)⁷. The Bomas Conference was reconvened later in 2003 with new MPs delegates and would continue up to April 2004.

Composition of delegates at the National Constitutional Conference

The composition of delegates at the Bomas Conference had been negotiated through the legal and administrative instruments that guided the review process. The delegates were⁸:-

- All the 210 members of parliament.
- Three delegates from each of the 74 districts, one of whom had to be a woman. The election of these delegates, which was designed by the commission was done through colleges of the local authorities.
- Representatives from political parties.
- 25 per cent of representatives from Civil Societies’ Organisations (CSOs) which included Religious Organisations, Non Governmental Organisations and Women’s Organisations.
- Observers, composed of representatives of institutions, organisations, and international observers, among others.
- All the CKRC Commissioners, who were managers and rapporteurs for the conference proceedings and who had no vote. Prof. Okoth Ogendo was the Rapporteur General while Prof. Ghai was the Chair of

⁷ See Ochuodho, 2011 and Khamisi, 2011 for the conflicts in the nascent NARC government.

⁸ See appendix II for the full list of women delegates

the Conference. P.L.O Lumumba was the secretary. The late Hon. Bonaya Godana was elected the first of the Vice Chairs while Sultana Fadhil from Coast and Koitamet Olekina from Rift Valley were the 2nd Vice Chairs.

The three Vice Chairs were elected by the delegates at the commencement of the conference. The seats were hotly contested and it became clear at this early stage that regional alignments and interests were going to play a big role in the conference. This was soon followed by the establishment of the fourteen technical committees whose leadership was also divided by region. From the onset, it was evident that regional politics would dominate the conference.

Women's participation at the National Constitutional Conference

One of the best experiences at the conference is the fact that from the onset negotiations for the review structures. The process had factored in women's representation after intense lobbying and negotiations during Safari Park consultations I, II, III and IV as described in Part I of this book. Never before had such a broad spectrum of women attended such an important national conference, which was highly political and guided by regional interests. Their number, although not substantively big, was enough to make them feel the warmth of each other, appreciate their commitment to the women's agenda, recognise their various capacities and skills, and their common goal.

As a result, women found their place at the National Constitutional Conference. The struggle by women leaders – described much earlier in this book – had begun to bear fruit. The various stakeholders had to implement the Affirmative Action principle that women had negotiated during the 1998-2000 consultations for the law and the process towards the making of the New Constitution. Women in the constituencies and their organisations had presented their views in a very articulate manner. The commission had harvested these views through the process of winnowing. In addition, women commissioners had stood in the line of duty and had vigilantly guarded women's interests. The ground was ready for the women delegates to water the seeds and nurture their growth.

Women delegates

Among the district delegates, women had their 30 per cent. Women parliamentarians were very few, forming not even 10 per cent of the total. Within civil society organisations, we managed a total of less than 25 per cent. However, women representatives at the National Constitutional Conference were focused, articulate and committed women, a majority of whom had been in line of struggle for many years. They had negotiated the process, mobilised the women to participate in the review process, and had prepared position papers. In addition, they had identified their strengths and were ready to carry

on from where women at the constituency level and at the CKRC had left. They were ready to plant more seeds to replace those that had fallen on the rocks and ready to water those that had germinated.

Among the key women at Bomas who came through women's organisations were:

- Ms Atsango Chesoni* – She was a very active member of the Committee on Legislature. She later became Vice Chair of the Committee of Experts on the Constitution and continued to safeguard women's gains.
- Mrs Martha Koome* – Who was Chair of the Bill of Rights Committee at the conference and Federation of Women Lawyers (FIDA) Chair. She, like Atsango, came in through Women's Organisations. During the Conference, she was appointed Judge of the High Court of Kenya.
- Ms Caroline Ng'ang'a* – Who was Chair of the Committee on Representation of the People. She came to the conference through political parties.
- Ms Joyce Majiwa* – Chair, Committee on Transition who also came in through Women's Organisations.
- Ms Sultana Fadhil* – A lawyer and one of the three Vice-Chairs of the Conference. She was elected to the position during the conference. One of the three Vice-Chairs had to be a woman.
- Ms Happy Gloria* – Member-Devolution Committee, District Delegate Busia, Western Kenya.
- Mrs. Nyathogora* – Member -Devolution Committee, District Delegate Nyeri, Central Kenya.
- Ms Wambui Kanyi* – Committee member on Representation of the People who came from Civil Society Organisations.
- Mrs Mwamburi* – Committee member on Devolution who came in as – District Delegate from Coast Province.
- Mrs Jane Kiano* – Maendeleo Ya Wanawake Trustee who came to the conference through Women's Organisations.
- Mrs Kamla Sikand* – Women's Organisations representative.
- Dr. Ruth Kibiti* – Who coordinated women meetings and who came to the conference through Women's Organisations.
- Mrs. Ruth Rop* – Who came as a district delegate from Uasin Gishu – Rift Valley Province.
- Prof. Maria Nzomo* – Women's Organisations

- Mrs Rose Waruhiu* – Women's Organisations representative.
Mrs. Grace Ogot – Who was a member of the Sulumeti Consensus Committee.

These and many other women camped at Bomas.

The women commissioners were rapporteurs and, therefore, other women could consult with them when necessary. Women met twice a week at the *Nyama Choma* place on Tuesdays and Thursdays. They shared their experiences with the committees and strategised together. Women's organisations such as FIDA, Collaborative Centre for Gender and Development (CCGD), Women Political Alliance of Kenya (WPAK), Women Political Caucus (WPC), League of Kenyan Women Voters (LKWV), Education Centre for Women in Democracy (ECWD), among others, attended the weekly meetings at Bomas, prepared position papers and even organised for women to have longer meetings and monitor the process. It was a very intense process and women gave it their all and commitment. The synergy between the women delegates, women commissioners and women's organisations was the catalyst to the focused and fruitful negotiations that women engaged in, at the conference.

Women's lobbying and negotiating strategies at Bomas

During the Bomas national conference, women delegates demonstrated their power to negotiate, indicating skills, qualities and the personality needed to move their negotiations forward. These qualities included being skilled, accountable, positive, consultative and well prepared. The qualities were observable in committees such as the Committee for Representation of the People where women wanted to adopt Proportional Representation (PR) as an electoral process. Delegates demonstrated their capacity to do research, to listen to other members of the committee and account to the larger women population in the country and let them know what was going on in the conference. These would in turn advise the delegates to adjust their positions when alternative proposals were tabled.

The delegates consulted with women commissioners on specific issues such as Mixed Member Proportional Representation (MMPR), Devolution, and the Bill of Rights, among others. They also consulted with members of specific committees and received feedback. In addition, the delegates consulted with the chairs of the committees, sometimes to be given more time to consult with their constituents. Often, they would work under pressure to prepare for the following morning while closely monitoring what was going on.

As in the earlier negotiations of the processes, namely; Safari Park negotiations, women delegates at Bomas clearly:

- Defined their problems at every stage and agreed on how to handle them;
- Developed strategies to address problems in the committees and at the plenary;
- Negotiated with influential individuals at the conference;
- Assigned roles and responsibilities to each other. Sometimes, it was a question of who would get the data to help women argue the case, for example, on Proportional Representation or on district elections;
- Called on experts to clarify the issues and advice them;
- Organised meetings outside Bomas to consolidate and share their strategies;
- Agreed to stick to principles but understand details for the purpose of pushing their case;
- Identified a coordinator, most of the time Dr. Ruth Kibiti, to bring them together at short notice, if the process was not going on well;
- When mediating teams or negotiating teams were required, women identified those who would be listened to by the other teams. At one time, Mrs. Grace Ogot was appointed to join a negotiating team when contentious issues on the executive and devolution threatened to break the conference. The team, which had other leaders like Bishop Sulumeti, Hon. Raila Odinga and Hon. Kiraitu Murungi, came up with a position that was then tabled in the plenary;
- Women had their eyes and ears on the plenary. They identified issues that if not addressed at the committee level, would be raised and addressed in the plenary. They would monitor what they had agreed on in the committee to ensure that it was indeed what was presented in the plenary. It is interesting to note how often issues of representation of the people, devolution and commission on gender kept disappearing, at the plenary;
- In committees, women would communicate with their eyes, notes and even ask to consult when an issue came up and they had no agreed upon position.

Generally, women had the issues at their fingertips in Bomas, the reason being that they had the human and intellectual capacity. They proved to be the most organised and focused group at the conference. The outcome of their work at Bomas is entrenched in the Bomas draft constitution; their basket was full at the conference.

Once again, women delegates were on the line of duty during the National Constitutional Conference (NCC) processes at Bomas in the same way that the women commissioners had ensured that the structure of the commission, the legislative and administrative framework, civic education, mobilisation of women to participate in the process, collection and collation of views and preparation of the draft, all took on board women's views and perspectives. Women commissioners had picked the baton from women leaders who had

negotiated the legislative framework and had ensured that was entrenched in Affirmative Action review law. The leaders had planted the seeds: women in the commission were to continue watering the seeds: They in turn handed over the baton to women delegates at Bomas to continue tendering the crop and planting more.

Women commissioners had ensured that, the CKRC draft of 2002 took on board women's interests and tabled them at Bomas for deliberation. The women at Bomas received the CKRC draft, studied women's gains and negotiated for retention of the same. They also expanded provisions for women. When structures like devolution were expanded, women ensured that their interests were taken on board. When issues of representation and legislature were debated, they also ensured that their interests were taken on board. They did the same in other committees for instance, when land issues and proposals on Bill of Rights were being negotiated. Women were there to safeguard their gains in the CKRC or to expand them whenever they could. Thus, the Bomas draft is the most women friendly draft of all the constitutional drafts.

Women's focus on critical committees at the National Constitutional Conference

Although women were generally very active in all the committees during the National Conference deliberations, there were, however, some committees that attracted women's focus more than others. These committees were: Committee on Representation of the People, Committee on Devolution of Power, Bill of Rights, Legislature, and the Committee on Constitutional Commissions. This should not be surprising because in the four committees, the question of ensuring women's representation in parliament, the local authorities and in all decision making positions, was an area that women had been working on for many years as evident earlier during the discussion on the struggle for Affirmative Action as part of the path travelled by women. They viewed NCC as the opportunity to negotiate and entrench the principle of Affirmative Action which had been denied them by parliament, over a period of time. They felt they were emerging from the shadows and were about to exhale. Devolution of power was very important to them also because of the various structures that the process was going to create in allowing women to reclaim their space. The Gender Commission was a tool to help them monitor the implementation and hold the government accountable for the decisions made in relation to women. It was therefore very important that they focus on this very important commission.

Women and representation at the National Constitutional Conference

In Part I, we discussed the key unifying factor in the women's struggle; the effort towards representation at all levels of decision-making. The focus for eighteen years of women's struggle, was parliament, local authorities and other decision-making bodies. In 1992, as we have seen, women endorsed at least 30 per cent which would be the critical mass necessary for them to make a difference in an institution. Actually, for many women, Affirmative Action had always meant 30 per cent representation in decision-making positions. This is why several draft constitutions, that is, CKRC 2002; 2004-2005 Bomas; Wako Draft; Referendum; 2010 Harmonised draft; and indeed the new constitution 2010; have specific percentages at every stage. Women had carried out research and had looked at various models of representation, for instance, the district representation in Uganda and Rwanda; political parties' nomination in Tanzania; proportional representation in South Africa; the quota systems and twinning in countries in Europe, among other models. For these provisions to find a place in the draft constitution, women had to do a lot of work. We present some highlights on women's representation in critical committees.

Women in the Committee on Representation of the People

Ms. Caroline Ng'ang'a, the convener of the Committee on Representation of the People, that is, the committee responsible for proposals on political parties, parliamentary and local authorities representation, as well as issues of electoral processes and boundaries, among others, was a woman of great wisdom and focus on issues of representation. She became that committee's chair after Prof. Maria Nzomo who was considered to be from Central Province but rather to be either from Eastern or Nairobi dropped. The province which was to provide the chair for this particular committee was Central Province. At Bomas, even the chairing of committees was region-based and some provinces were more adept at the implementation of this principle than others. Central Province seemed to have been caught napping when this region-based principle was being crystallised and later implemented. They realised after the distribution of the chairs of the committees had been done that, Representation of the People's Committee, which was being chaired by Prof. Nzomo, was supposed to have been chaired by Central Province. They soon woke up from their slumber and protested. Since Maria Nzomo could only be replaced with a woman, Caroline Ng'ang'a, an official of the Labour Party of Kenya, took the mantle. She did not disappoint.

For women, this committee was critical because it held the key to women's political party representation as well as the process for getting into other institutions such as parliament, regional and local governments. Ms Caroline Ng'ang'a, who was also a candidate for the 2002 elections, understood the

importance of this committee. She urged women to propose issues that they thought needed to be considered by her committee. This was important because it clearly demonstrated why it was critical to have women at decision-making positions.

One of the key debates, as mentioned earlier, revolved around Proportional Representation (PR) method or the District Representation for implementation of at least one-third women's representation in the electoral bodies. The PR method was also debated by the Constitutional Review Commissioners. Mixed Members Proportional Representation (MMPR) was proposed in order to accommodate various groups, including women. This was attractive to women because the MMPR method was one that would promote better representation for the diverse groups, strengthen political parties and also ensure every vote counted. Women proposed this method after thorough discussions and analysis of papers by experts on the electoral processes. However, it was clear to women that it would be difficult to achieve one-third women's representation through this process without a lot of antagonism from the men whose minds seemed to be like concrete, that is, permanently set on the majoritarian system of national elections. It was also clear that the MMPR method was not fully understood by both men and women delegates.

Women spent a lot of time discussing this at the lunchtime consultations which they used to hold every Tuesday and Thursday. They invited experts to explain the PR method, how it works, which countries had adopted it, and so on. For a long time, women tried to fully understand it and do their arithmetic on what percentage this would give them. In the meantime, men had already rejected the MMPR method saying that there would be too many nominated members of parliament or of local authorities, who would not have reached there through the "hard way," that is, through direct elections for individual members at the constituency level where "the winner takes all" is the principle.

It would be difficult, after going through the draft constitution, not to recognise the work that the women representatives had done in translating the views of women collected throughout the country into constitutional provisions. The result of the hard work is evident in the provisions quoted earlier in this chapter. Their level of consultations, level of understanding of the issues that concerned them was beyond question. Their process of consultation and their appreciation of each other was something that one could not fault. If there was a group at Bomas that was focused on what they wanted for those who sent them to negotiate the constitution, it was the women. They stuck to their course with unparalleled commitment and sense of purpose.

At different times before and during the negotiations, women were told that they had to come up with an acceptable process of implementing the proposals on representation. The proposals they made were to have women elected at the district unit by both men and women. They argued that this process: was

simple; easy to implement; would provide a training ground for women to compete in the mainstream elections; socialise women into competitive politics; give rural women a greater chance to get into parliament; that districts already existed and there were clear boundaries; communities could identify with these districts which have appropriate infrastructure, and the units are small and enough for women to campaign.

They went further and said that women at the district level would: be nominated by political parties; solicit for these nominations and work to promote that political party, by selling the political party programmes and constitution among other benefits to the party.

In addition to all these, women representatives mapped out the role of women in parliament. They argued that a district woman representative would:-

- Support the other MPs elected in the mainstream election at the constituency level.
- Like others, their primary role would be legislative.
- Women would bring the interests of the districts and their parties to parliament.
- Would promote women's agenda and ensure domestication of international conventions and protection of marginalised groups.
- Promote gender mainstreaming at national and local levels, among other roles.

Women even went ahead to suggest that they should not hold the district seat for more than two terms in order to give opportunities to other women. Then, they would direct their efforts in the open field. In addition to this, they even proposed proportional representation through political parties or a combination of both district representation and proportional representation. They left no stone unturned in trying to ensure that a method, acceptable to all, was arrived at to implement this principle of Affirmative Action. However, this remained one of the most controversial proposals made to members of parliament. We note that at every stage of the debate on the constitution, the Affirmative Action proposal always came to the fore. This is also seen in the way it is reflected in the four draft constitutions.

This proposal for district representation may have looked easy for many women, but it brought in a new political dimension. Male politicians began to count the number of districts and how that would affect the ethnic and regional balancing in parliament. The question of what would take priority, ethnic or women's interests, came to the fore. Balancing parliamentary power, ethnic and regional power became an issue and women became desperate. This went on until Caroline Ng'ang'a, the Chair of the Committee on Representation, called in a few women to review the issue. Subsequent discussion went as follows:

Caroline Ng'ang'a: Ladies, I cannot keep on holding back the discussions on the electoral method. You have taken a long time to decide whether you want us to go through the MMPR method or whether you want us to go through the current system and then have special constituencies for women.

Wambui Kanyi: I agree with Caroline. I am in the committee and I know that decisions have to be made soon. We are running out of time.

Rhoda Maende: I think men do not want a Proportional Representation (PR) system; so why are we holding on to it? We shall never win, so let us move to our plan B.

Kanyi: I wish we could convince these men that would be better. We have tried to explain to them that it is a better electoral process—that every vote counts and that, it strengthens the political parties as institutions.

Maende: Wambui, I agree with you, but are we the ones to carry the burden of strengthening political parties and promoting democracy when men don't want it? These men don't care. Why are we carrying the burden?

Atsango Chesoni: You guys have to make up your minds. I am in the Committee on the Legislature. We are making a decision and I cannot just go and propose that we shall have one third in parliament and in the upper chamber without knowing how this will happen. You have to make up your minds so that we synchronise.

Happy Gloria: I am in the Devolution Committee and we have proposed at least one third women's representation in the district level governments through special seats. We have also agreed that women will contest special seats after the main elections in order to ensure at least one third representation. At the locational level, we have proposed fifty percent representatives and the committee has agreed.

Mwamburi: I am also in the Devolution Committee. We tried to get one third for regional governments but we did not manage. The proposal, however, has a substantive number of women. We have also proposed special seats for women in parliament through the district representation but we have forwarded that to the committee on the legislature.

Ng'ang'a: I can now see that the other committees have gone for special seats and the men in my committee don't care about the PR system, so why are you holding on to it?

Kanyi: I think.....

Ng'ang'a: No, Wambui, we cannot continue talking about the merits of the PR system. We have to make a decision.

Chesoni: Make the decision today and not tomorrow.

Ng'ang'a: No, Atsango. You know the committees have procedures and since this decision was banked for later debate; we can't do it today.

Chesoni: Okay, but make it the soonest possible.

Maende: I suggest we ask Dr. Ruth Kibiti to call the women to the tent and at the same time propose we agree on the special seats. We have neither time nor the energy to deal with a system which the men are rejecting. We won't get what we are looking for.

Nyathogora: I am also in the Devolution Committee and I suggest we take special seats and then think about the method of election later.

The work done by women in this Committee on Representation and other Bomas Conference is reflected in Bomas Draft, later in Wako Draft and 2010 Draft. Some gains have gone down the drain like the 30 per cent women's representation in the National Assembly but a lot has remained.

Devolution of power, the most contested concept and structures

One of the most contentious issues throughout the process was devolution of power. Kenyans were clear that the centralisation of power had deprived many of access to decision making and resources. "Centralisation of political power and power to distribute resources was wasteful," it was argued many times, "it keeps the energy of communities locked up and frustrated." However, the debate has always been, "Should we devolve within a unitary state or should we go federal so that the federal governments have both economic and political powers?"

So, the Devolution Committee debated various levels of government, what power needed to be devolved to the lower levels including regional, district and locations. As usual, politicians never ceased to amaze. Many argued that devolution should go to the constituency level, for obvious reasons—MPs would call the shots and control power at that level as they do with the Constituency Development Fund (CDF). This proposal was however defeated quite early in the negotiations process.

The other concern was what powers should go to the regions, the districts or local government: even what names the heads of districts should be given. The word "District Governor" did not go down well with Members of Parliament but there were many councillors in the committee who were comfortable with "Governor" because that meant power.

The fears around majimbo (federal governments) had been debated often. Those for majimbo argued that this would: make leaders accountable; promote citizen participation; bring economic independence; decentralise political power; promote public accountability; enhance control of resources by communities; introduce a measure of self determination; and that unitary systems suffocate local leadership.

On the other hand, those for unitary government argued that a unitary government:

- Would bring national unity;
- Authority of state could not be compromised;
- Federalism would promote ethnic tensions and hatred;
- Multi ethnic counties would be difficult to manage through federal systems;
- Federalism would lead to geographical dispersion of authoritarianism at the local level among other problems.

Both sides ignored the arguments or lessons learnt from other countries. For instance, the fact that 40 per cent of the world's population live in federal states in Africa, including Ethiopia, Nigeria and South Africa.

Sometimes, because of our ethnic suspicions and historical experiences, marginalisation and competition over resources, devolution remained the most contentious issue during the whole review process. This was the case in the CKRC, Bomas Constitutional Conference, and negotiations around 2005 referendum draft, 2009 Harmonised Draft, and the 2010 referendum debate and after.

Questions about costs, boundaries, powers to the devolved governments, and the constitution of the same were the order of the day. The debate was at times acrimonious, often based on perception of who or who was not guiding the debate on ethnic and regional interests, among other interests.

Discussions on distribution of power went on before, during and after Bomas and indeed were carried over to the debate on the Harmonised Draft 2009/2010 and in the referendum campaign with those in the 'No' camp arguing that there was no devolution in the Draft 2010 constitution. Some of the politicians would not agree that devolution was not a static pattern, that it was a process around which communities would organise themselves on how to make decisions and policies related to them, that a state can have local authorities in a unitary, that as it happened in early years of independence, we would have strong local authorities, that local government counties could also be strong and autonomous.

But those who wanted regions looked at them much more as structures for political bargaining and negotiations than as economic structures. The fact that in all cases, arguments were not about regions collecting taxes and contributing to the centre, indicates that even for those who wanted regional governments, they did not argue for economic independence of these regions where major taxes could be collected by the regions and contribute to the centre. This could be so because some saw Coast, Rift Valley, Nairobi and sometimes Central regions as having the capacity to become economically independent. The fixation with giving major powers to the central government to collect all

major taxes and then having a finance allocation commission to deal with equalisation of resources, is based on these assumptions and fears that some regional governments would not be able to sustain themselves.

In 2010, it was interesting to note that in his response to the debate on the proposed constitution, the Parliamentary Select Committee (PSC) chair said, “the system of Government we have crafted is a unitary state within which we have devolved powers to the counties.” It may also, be remembered that at the Bomas Constitutional Conference, Hon. Oloo Aringo had tabled a motion to make Kenya adopt a parliamentary system of Government. As the debate was in the plenary towards the end of the conference, he was asked whether he still wanted to raise and table the motion. His response was that there was no need to do that “because what we have now created is a parliamentary system”. These were two opposing views.

Women had to keep reminding themselves that constitution making is a political process and Kenyan politics, as the late Kijana Wamalwa had said, “is about putting some cards on the table and others under the table.” Often, discussions about ethnic diversity would come up but mainly in relation to how to protect our ethnic groups, that is, “ourselves” from “others”. The question as to whether we are a nation was hardly discussed. However, we had continually argued that the perpetual problem for Kenya had been misuse of power and this had to be avoided because power had to be at the service of the people. We had to be less territorial and devolve it to ensure control of the same by the citizenry.

Often, the question of how our history of more than forty years could inform our structures of devolution was obscured by suspicion of the various ethnic groups and ethnic king pins. In some cases, as in the case of papers presented by various scholars including Mr Julius Kipng’etich and Mr Gerrishon Ikiara, there were discussions on:

- The need to maximise on incentives and the commitment of devolved governments to contribute to the centre;
- The need to reduce dependency and promotion of independence of the units of devolution;
- Creation of an enabling environment for devolved governments to compete;
- Deal with issues of residence and enjoyment of benefits;
- Financing of the regional devolved governments;
- Economic viability of units of devolution;
- Specific financial responsibilities of each devolved unit;
- How to deal with taxation and revenue collection issues;
- The revenue sharing formulae between the central governments and devolved governments.

Scholars such as Mr Ronald Watts, Prof. Richard Simeon, Prof. Peter Wanyande, Prof. J.B. Ojwang, Prof. Walter Oyugi, and Dr. Gerrishon Ikiara, among other scholars, presented intellectual arguments on the systems of government with special focus on devolution. Generally, the scholars raised issues on the structure and values that we wanted to deal with, values of sharing, inclusion, people's participation, equality, freedom within the units, creating options, innovations, and so on. Some wanted the process to make fundamental changes and to set up the path in which the constitution would follow.

As noted earlier, what happened in the negotiations on the devolution of power was often coloured by ethnic tensions, suspicions and fear of domination. It is no wonder that we had provincial councils in the 2002 CKRC Draft, regional governments in the Bomas Draft, no regional or provincial Governments in the 2005 referendum Draft, regional governments in the 2009 Harmonised Draft, no regional governments in the 2010 constitution, and finally, the 47 counties.

People's views on devolution

As we saw earlier, many of those who gave views to the commission were poor people. They saw the constitution as a tool to deal with their dogged lives. They had reason to think so because Kenya is not a poor country; only a country of inequalities. When we come to the gap between the rich and the poor, we compete closely with Nigeria and Brazil. When we come to corruption, we have been in headlines for being among the most corrupt countries in the world. It is, therefore, not surprising that majority of Kenyans wanted power to be devolved to the lower levels of Government. It was argued, as evident in all the draft constitutions, that is, the CKRC 2002; Bomas 2004; the Referendum Draft 2005, Harmonised Draft 2009; and the 2010 constitution, that devolution would:

- a) Give powers of self-governance to people at all levels and enhance the participation of people and communities in the exercise of the powers of the state;
- b) Strengthen national unity by recognizing diversity in ways that promote among all citizens, the sense that they belong to Kenya and share in its government;
- c) Ensure the democratic and accountable exercise of power;
- d) Increase checks and balances and the separation of powers;
- e) Promote social and economic development throughout Kenya;
- f) Ensure equitable sharing of national and local resources throughout Kenya, with special provisions for marginalised areas;
- g) Facilitate the decentralisation of central government powers and the location of central government institutions and departments away from

the capital territory in order to ensure equitable distribution of resources in all the provinces;

- h) Provide essential services to the people effectively and economically;
- i) Protect and promote the interests and rights of minorities and the disadvantaged groups.

It was evident that Kenyans wanted power to be devolved to the lowest levels possible. It is also worth noting how much faith many Kenyans had in village elders. They said these were people they could call upon at night, they knew them and the elders knew them too. In that respect, they wanted to govern themselves at the village, location, district, regional and national levels. They were unhappy with those governing them at the national level who did not understand their culture, ‘who beat and arrest men in front of their wives and children’—an act equivalent to stripping them naked. “When a man comes back from the cells, where does he go? How can he look at his wife in the face when he has been beaten up in her presence?” asked a man in Butula constituency in Western Kenya.⁹

They wanted to be given an opportunity to exercise instant justice. “Why”, they asked, “would you take a chicken thief to the police when all the neighbours have seen him steal the chicken with their naked eyes? Why not get the elders to tell him to give back the chicken and also pay a fine?” asked a man from Narok North Constituency. They argued that one goes to court and never wins. The lawyers come and confuse everybody with arguments and counter arguments after which a thief, whom one knows very well is a thief, is released. For them, this was not justice.

They did not understand why registration of births and deaths could not be done at the village. After all, they are the ones who bury the dead and are present when children are born. Therefore, why not register both deaths and births at the village and pass on the names to those dealing with national statistics. “Even title deeds—everyone knows what land is whose at the village level.”

In short, Kenyans were saying that they were tired of a centralised system of government and wanted to reclaim power and deal with many issues at the local level. For them, government was too heavy and too far from them. It was oppressive. It should not even decide who the village chief should be. They wanted to elect the chief themselves. It was a message loud and clear. Kenyans wanted devolution of power to the people so that they could be engaged in decision making and manage their own lives.

As mentioned earlier, the Committee on Devolution was very important and women played a critical role. It was in this committee, as well as in other

⁹ Author's own notes

committees such as the one on Representation of the People, where issues of the domination of small communities or groups by big or large communities were debated. People thought about boundaries, about human and natural resources and how to deal with inequalities in terms of resource distribution and representation.

There were those who felt some communities were tied together by a blood knot and should be allowed to work together. Domination by big ethnic communities, protection of minorities, ethnic groups, retention of ancestral homes, political and economic power, were major issues in devolution. There was a struggle, for instance, on Mt. Elgon. Some wanted it to be in the Rift-Valley region while others would say, "Over my dead body; Mt. Elgon belongs to Western Kenya." Others like Teso, small as it is as a district, wanted to be a region by itself and work directly with the central government. They did not want to be in the Western Province/region. They said, "either we are alone or we go to our brothers in Uganda."

Kenyans presented different histories and their indigenous profiles for specific areas as a way of legitimizing their decision for recognition as different entities. That is why the Teso people, wanted to be recognised separately from the Luhya family group. People from North Rift differed on what kind of a region they needed. The Marakwet, Turkana and Samburu did not want the domination of the Nandis. They wanted to be independent of them. Kirinyaga people did not want to be in Central Kenya. They were, for example, comfortable with just being the Embu, Mbeere, and the Ndia. Others wondered whether Laikipia District should be in Central or Rift-Valley Region. "What about Nakuru? It should go to Central," Central people would say. "Over our dead bodies," Rift Valley leaders would respond.

Broadly speaking, the committee on devolution agreed that in creating a region, it was important to look at the following:

- History of the people
- Culture
- Economic viability
- Interdependency
- Integration of the people
- Fostering unity
- Economic viability

Women's negotiations in the Devolution Committee

Women in the committee on devolution were very focused. They participated fully in the committee. It was an important committee because it was dealing with issues at the community level, meant to give power back to the people.

Let us have a glimpse of how women negotiated at this committee:

Women on the devolution committee

Convener: We have agreed on establishing 14 (fourteen) regions and two people from each region to form the regional assembly.

Committee Members: Yes.

Ms Happy Gloria: Chair, we should then ensure that each region brings in a woman?

Male delegate: That cannot happen. That would mean that women will be 50 per cent instead of one third.

Mrs Nyathogora: What is wrong with women being 50 per cent in the regional assemblies?

Mrs Helen Korir: We can then propose that the regions will have 3 delegates one of whom should be a woman.

Male delegate: We have agreed that we need to be aware of the costs. We do not want very expensive regional assemblies. So, let us leave them as two from each region.

Mrs. Mwamburi: Then there will be no women in the regional assemblies.

Male Delegate: Chair, let us go on. We have agreed on two delegates.

The women decided to consult again on this issue. They had successfully argued for the one third women's representation in the Lower House whose membership was to come from the constituencies. They had also successfully negotiated for the one third in district councils and 50 per cent at the locational government. They, after consultations, agreed to ask for a general provision that would bring a law to ensure the principle of Affirmative Action was implemented.

The provision on Balance of Gender and Diversity was adopted. It says:

228 (a) (i) At anytime, not more than two-thirds of the members of any assembly, council or executive committee constituted under this chapter are to be of the same sex.

There were those moments when women gave in to resistance only to raise the issues later. The spirited effort that women demonstrated in the Devolution Committee was unparalleled. They were very faithful members of the committee. They worked on details, followed them up to the committee level, to the plenary and even to the drafters. They contributed to the debates substantially and when it was time for representation to the various levels of government, they became very focused. Often, I received notes from women in the Devolution Committee asking me, "Prof, which decision will give maximum gains for us?" At one time, one male member, noting that women

were seeking direction from me raised objection saying, "Prof. needs to be reminded she is not a woman. She is a Rapporteur and a Commissioner."

Well, I knew I was a Commissioner and a Rapporteur who was also a woman. How can one be neutral on the strategic or any other needs of women? But I did not say this. I was in the constitution drafting process because women had sent me there. Women talked to each other using all manner of languages, for instance, body language, writing notes and going out to consult. They worked together so purposefully and with so much determination as only women could master. It was a joyous struggle at Bomas.

A sample of women's contribution at the committee of the whole house

The session was chaired by Delegate Fadhili Sultan, vice chair of the conference.

Hon. Delegate Martha Rop: My name is Martha Rop, number 509 from women's organisations, Uasin Gishu District. I agree with my colleague from Mt. Elgon and I support him to move from group of sixteen to eight which is Turkana, West Pokot, Marakwet and Mt. Elgon. Most of the time, these people have cultural ties. Going back to number nine, I want Keiyo, Uasin Gishu, Nandi North, Nandi South, Baringo and Trans-Nzoia to be under one region. This is because they are so close together. These districts should remain together. That would be a wise thing to do. In any case, there is no tribalism here. There are so many different tribes. Zone number ten, that is Kericho, Buret, Bomet, Nakuru and Koibatek should be merged together so that the people of Koibatek won't get tired of moving all the way from the boundary in Nakuru. We have to fight for them too. The people should be near the means of transport. Those are my views. Thank you.

Hon. Delegate Fatuma Sheikh Mohammed: Thank you Madam Chairlady, my name is Fatuma Sheikh Mohammed Delegate number 254 from Wajir District. When we were considering the zones, some of the considerations involved historical, religious, economic and cultural aspects. Those are some of the things that we were considering. If we just look at North Eastern, it was divided into two groups, that is, Wajir and Mandera and then Garissa and Ijara. I could have considered that as okay. We don't have to put the four districts together because we have a very large area e.g. Wajir which covers 56,698 square kilometres at least. So, we have to divide that area into two, we cannot be in or grouped into all the four districts. And another thing, I support devolution. It is the answer to our problems, especially we people from the North Eastern because we have suffered a lot in the hands of the provincial administration. Thank you.

Hon. Delegate Julia Ojiambo: Thank you very much Madam Chair. Madam, I want to talk on the area of distribution of resources to devolved areas. And I want to say madam chair, that initially, to be able to deal with the inequality that has existed and continues to exist in areas that have been marginalised, some criteria must be worked out to distribute the existing resources before these marginalised areas can take off. I know, madam chairperson, that we have said that resources will be equally distributed, but this will continue to marginalise the areas that so far are poor because they will remain where they are whereas those who have enjoyed wealth will take off and will continue to grow. So, I would want to suggest that factors such as surface area of devolved units, population, and more importantly, poverty index be considered. Poverty index is going to be very important because that is the only way we can bring resources to those areas that have nothing up to now. Even if we start to think of industrialisation of those areas, this is not going to be achieved for some time while others will still be growing. So, that is an area I would like the committee that will be looking at this again to delve into.

Madam Chair, there is also the area of boundaries that I would like to support and I think it is important as we talk about these new units that we are creating. I want madam chair to refer to our boundaries particularly in Nyanza and Western. We are talking about our land resources but we have forgotten about water resources as well. And those of us who come from the lake area do know very well that a lot of our water resources have been left unattended to and little attention has been given to our land. Busia in Western Province, for instance, has lost almost fifty kilometres of our land and water to Uganda and Nyanza. I think in some areas, in South Nyanza, almost six hundred kilometres have been left to Uganda. We would like the Boundaries Commission to work speedily and get this rectified so that we have a definite boundary on Lake Victoria between Kenya and Uganda.

Lastly, Madam Chair, I just want to say that we appreciate, very much, the focus that has been given to Affirmative Action and I would like the conference to continue with the same spirit. We talk about getting women on board, we are also considering other areas that need to be given Affirmative Action. I would like to state here that, we are not suggesting that women who are not worth of being leaders be leaders. Women are worth being leaders and they know what leadership is. Even if it is nomination, this country has capable women. I would like to suggest to the men who are in this conference that, they should regard the women who are out there as leaders too, just as they regard the women who are inside this conference, who are able to contribute to the leadership debate, just as much as the men who we have inside here. So, I appreciate the sentiment that women should be brought on board. I

want finally to support fully the devolution of power and resources because this is what Kenyans have been waiting for, for a long time and we are here to support it and to ensure that we take power back to the people of this land. Thank you, Chairlady.

Hon. Delegate Fatuma Boru: Madam Chairlady, my name is Fatuma Boru, District Delegate from Isiolo District. Madam Chair, I would like to visit unit five of the regional units. When we are thinking about units, the following factors, amongst others, must be taken into account:

1. The units must not be too large in terms of territorial size. Madam Chair, the total area of unit 5 in size is 126,740 square kilometres. It is equivalent to the total sum of the area of units one, two, four, ten, twelve, thirteen, fourteen, sixteen, seventeen and eighteen. In other words, it covers an area of eighteen units, therefore, unit five has too expansive territorial size.
2. The third option of eighteen units seems to be more acceptable to the majority of Kenyans, the main reason being that it took into account the factor of cultural homogeneity, harmony, integration, as well as considering ethnicity and historical factors, factors which seem to have taken centre stage in the formulation of those units in option three. Isiolo, Marsabit and Moyale have been in Eastern Province for 40 years and we have been marginalised because we have been swallowed by bigger tribes. To give you an example, we are put together with Laikipia which alone has a population of 322,187 persons as compared to Isiolo, Marsabit and Moyale with only 275,818 persons combined. Thus, Laikipia alone constitutes 44 per cent of the entire population of unit five. Madam Chair, in terms of proposed levels of government, the zone or sub-region becomes a principle level of devolution. After examining all the above mentioned factors, Isiolo, Marsabit and Moyale will be rightfully in the separate unit of its own for viable devolution. Thank you.

Hon. Delegate Teresa Usunga: I am delegate number 441. Actually, I have been wanting to speak and I thank you Madam Chairlady. At least ladies think about ladies. Thank you, (*Laughter*). I am grateful for all that has been done so far. Now, when we look at any area, we will find that the people who live there really matter, what they do in that place and also how they organise their lives in that place really matters.

So, even as we are looking at devolution of power, we see the type of people who are in a given area and then we also find that according to the way the zones have been presented, there are zones that shocked me, especially when I was looking at Nyanza. I find that Nyanza has been divided into about three parts and Kuria is in Trans Mara and Narok and then you also find Kisii is alone, that is to say Kisii Central, Gucha and

Nyamira. Actually, some people may be too used to one another that it will take them quite some time to be used to being different. As things stand, we know that Nyanza has five sons: that is Luo, Kisii, Kuria, Suba and Central Nyanza, that is Nyando. So, generally, when we look at the whole thing, we see there are areas which are more fertile than others or richer than others. So long as people are able to agree that they need to be inter-dependent, and need to help one another in many ways, that will be alright. Actually, I have much more to say but let us give other people a chance. Thank you.

These presentations clearly indicate that women did not only focus on their specific issues but also contributed significantly to other aspects of the debate. I have quoted these five women delegates from different provinces in order to demonstrate how women participated in the process. As noted earlier, the debate on devolution and mapping out regional boundaries was one of the most contested areas during the national conference. These women were making their comments in the committee of the whole house, that is, the plenary of the conference where Dr. Musonik Arap Korir, Dr. Mutakha Kangu, Prof. Yash Pal Ghai and I presented the proposals on devolution. It is clear that on this very critical issue, women had their say. Concerns on equal distribution of resources, regional boundaries, sizes of the units, criteria used to create the units and fairness in dealing with the units, are clearly stipulated. I note too that women focused on areas where they belong, where they have knowledge of the communities and their interests but also where they have information on population and available resources.

It is also important to see the reconciliatory manner in which women discuss very sensitive community issues. We note that it is very important that women's perspectives on all discussions, including community/ethnic specific, regional and national be sought. Women in this plenary debate were articulate, focused and informed.

I have gone into details on the Devolution Committee to show the weight of the issues the committee was dealing with and how women had to deal with many issues beyond their own. This was, politically, a very active committee. Debates were often very emotional. It was about ethnic and regional power. At the same time, it was about protection of the minority communities. It was about real and perceived inequalities; about power distribution; and about history. Factual and mythical ethnic fears were played out in the open on a regular basis. Some people did not want regions while others did. Let us sample some sentiments:

Hon. Shitemi said: "To hell with regions. If they exist, they should exist only in an advisory role."

Hon. Kosgei: "Zones should remain as coordinating bodies."

Hon. Biwot: "Districts should be the principal level of devolution. We need to figure out how they relate to the administration. The national level should have reduced powers while a location is the place of real action for development."

Hon. G.G. Kariuki: "Take power back to the people, through national, district and locational levels. We do not need regions."

Hon. Galgalo: "Let the districts deal directly with the national level. Most functions should go to the county level. The province should be the main focus of devolution."

Hon. Kisiero Mathenge: "Let zones coordinate, but they should have no power to make laws or collect taxes."

Hon. Katuku: "Have the district as the centre for devolution."

Hon. Mwachiro: "Real power to the region."

Hon. Godana: "Devolution of power should protect minorities—we need to consult more."

Ms Lydia Kimani: "Have powers devolved to the district."

Ms Helen Korir (from West Pokot): "We need to find out how a community will benefit from the resources."

Mrs Mwamburi: "61 per cent of Taita Taveta is occupied by animals."

Ms Helen Korir, "Let power go to the district."

Hon. Raila Odinga: "Devolution must protect minorities. We should think about how Teso people can be protected like the German small states or New Haven. We should make exceptions where there is need and when it is justified."

Mr Shitemi: "If ethnic groupings will be better, so be it. We need to recognise we belong to tribes and live the way individual tribes want."

Mrs Grace Ogot: "Gem division was taken to Butere. Take it back to Luanda."

Mr Serut: "Mt. Elgon should be moved to Rift Valley."

Mr. James Foster: "We need to ensure that national resources, such as oil, do not belong to a particular community but the hosting community should have some access to its benefits."

Mr Syongo: "We need to make provisions for the local people."

Ms Happy Gloria: "We need to understand the cultural background of the people."

Mrs Martha Rop: "Koibatek should go with Kericho."

Mrs Sofia from Samburu wanted to retain a zone where the Samburu people could feel secure.

Mr George Kinyua: Wanted Nakuru to be put together with Nyandarua, Baringo and Laikipia in order to avoid tribal clashes.

As can be seen, the Committee on Devolution was where tempers sometimes ran very high. One could tell it was about control of resources, particularly land. It was about how to ensure equitability.

In pursuit of the Gender Commission

The women in the Committee on Constitutional Commissions had a hard time trying to retain the Gender Commission on the general list of commissions. This is interesting because the Gender Commission was proposed countrywide by women and had appeared in the initial CKRC 2002 draft. By the time the draft was presented at Bomas, the Gender Commission had been made part of the Human Rights and Administrative Justice Commission. One gender commissioner was to take care of gender issues. When the draft was disseminated, women proposed again that the Gender Commission be reinstated in the draft on equal basis with those other commissions. The debate was carried out in the Sub-Committee on “Commissions and Management of Constitutionality.” However, the membership was set at four commissioners while other constitutional commissions had nine members. At a conveners’ meeting, I raised the issue on this disparity. Prof. Okoth Ogendo supported me and insisted that if we agreed with the principle that we needed a Gender Commission, then it had to be treated like all others. Our request was however not granted. The drafters retained the four commissioners even after delegate Cecil Mbarire raised the issue in the plenary. Worse still, the Gender Commission did not appear in the draft that was eventually tabled for adoption. Women commissioners had to follow it up with the drafters, look at the resolution of the conference and have the Gender Commission reinstated with its nine members. We had gone full cycle but thankfully, we now have the Human Rights and Gender Equality Commission in our new constitution which was promulgated in 2010 and the Gender and Equality Commission has been created.

Remaining accountable to women and monitoring progress at the Bomas Conference

We have stated that women from all the twelve Technical Committees of the conference met twice a week over lunch hour, shared their views and asked for support from one another. At other times, they met outside the conference vicinity in hotels, mostly, to strategise. Women’s organisations and women leaders who were not part of the conference attended the Tuesday and Thursday meetings at the Nyama Choma Tent at Bomas. They brought research information they had collected and offered whatever support they could to the female delegates. Women’s Political Alliance – Kenya (WPAK); Women’s Political Caucus (WPC); Federation of Women Lawyers (FIDA); Collaborative Centre for Gender and Development (CCGD) and the Education Centre for Women in Development (ECWD), among other organisations, brought in data, statistics, concept papers, and so on, and linked up with the women at Bomas to ensure women won their battle. It was during such sessions that women solidarity and respect for knowledge, their different roles

and skills came to the fore. It was an experience to behold, an experience worth celebrating. Women were in sync with each other and with their universe as exemplified by their resolve in the committees. In the Devolution Committee, the Committee on Representation of the People, Bill of Rights, Legislature, among other committees, women from various ethnic communities and different cultural backgrounds were completely in harmony as they pushed their agenda forward.

Keeping their eyes on the goal

One agrees that women had a sense of purpose in their negotiations. They wanted to achieve a level of representation that would give them a critical mass, that would make their voice heard and their visibility in these institutions apparent. That is why, for instance, they were more focused on ensuring that institutions of governance such as parliament, district and regional governments, had at least one third representation of women. Their idea was to get to the institutions first. They, therefore, hardly focused on the nature of those institutions. The opportunity to enter these institutions finally came with the promulgation of the constitution on August 27th 2010, giving women the chance to transform to become institutions of service the institution the people, institutions that should take on board women's world view. The need to think about these institutions, even as women focus on their participation in them is paramount because they need to change. For example, at Bomas, women gave little attention, to the proposed power of the president in terms of being the head of government, head of state and chair to the cabinet. According to them, the conference could decide whatever they wanted.

As to what powers the prime minister could have and how he/she could be appointed or dismissed, there were critical provisions which were to later contribute to the collapse of the Bomas process and to the lost 2005 referendum. There was a time when the other eleven committees could not meet because of the issues that were being discussed in the Executive Committee. Many delegates would fill the tent of the Executive Committee and sit outside because there was no more space inside. There were times when the same happened in the Devolution Committee.

Surprisingly and most unusual, women did not question the nature of power of the various institutions being created although they wanted to be part of these same institutions. This notwithstanding, women's struggle during the review process had a sense of purpose, a desire to achieve their primary goals: the flowering of energy into something concrete and worth their while. They were united in purpose. They wanted to be part of the institutions, have at least one third representation in all the institutions, that is, parliament, upper house, regional governments, district governments, locational committees, all commissions, and so forth. This, they negotiated for and more or less achieved

their target at Bomas; and more or less in the 2005 Referendum draft. They also negotiated for many other provisions, particularly in the Bill of Rights, in the national values and goals, citizenship, land and property and in the constitutional commissions.

Women's struggle, with focus on clear specific issues, was based on their concrete personal and collective experience. For a long time, women in Kenya were ridiculed; they were taunted, often being asked, "What are women looking for? Women are their worst enemies; they are the majority, why do they not vote for each other?" The struggle of women in the review process reached such a high level of unity of purpose and solidarity that no one could question. This solidarity, as we have seen, was manifested during the negotiation of the process at levels of the review process. The constitution of Kenya was promulgated by His Excellency President Mwai Kibaki on August 27th 2010 in a day which, for women, was their day of harvest.

Focus on the second part of the covenant at the Bomas Conference

As we noted in the introduction to this book, women were negotiating a double covenant in the following way:

- *The first covenant:* Women wanted to negotiate their space as equal citizens who had the right to equal treatment with men on all matters and as a category of citizens who had to take their place in leadership and play their rightful role in shaping their destiny and that of their nation. They wanted positive measures to deal with hundreds of years of oppression.
- *The second covenant:* Women wanted to negotiate along with other Kenyans to reclaim the peoples' sovereignty, that is, to re-assert the citizens' role as the source of power that the state had misused in governing them; their right to sovereignty; and to check state excesses and misuse of people's power. Kenyan people wanted to get their rights as human beings, their control in decision-making, and their capacity to determine who would govern them and how they would be governed.

Like all other Kenyans, women had suffered from the State's appropriation of people's power and misuse of the same. People had lost their lives while negotiating the covenant. Women were less prepared on the second part of the covenant. They had not debated issues such as the executive structure, transitional provisions, parliamentary system vis a vis presidential systems, devolution of power structures such as the regional governments and judiciary, among others. The issues of representation at all levels, inheritance, ownership of land, dual citizenship, social economic rights, human rights, the rights of the elderly and the marginalised were their main focus.

The Bomas Conference was also about ethnic, regional, community, and religious interests. Nothing demonstrated this more than the election of the Vice Chairs of the conference and the lobbying that went on at night before this was done. Religious leaders and, other groups had the shock of their lives when regional interests took precedence and none of them managed to secure a seat. Those elected were: Koitamet ole-Kina for Rift Valley, Bonaya Godana of Eastern Province and Sultana Fadhil from Coast. Ironically, when women went to elect their own representative, the issues at stake were turned into a perceived polarisation of elite vis a vis grass root women, the same strategy used by politicians to divide the women. Fadhil, who was not seen as coming from Nairobi, got the seat but Rose Waruhiu, who was viewed as elite and coming from Nairobi, lost the contest.

The regional power game was demonstrated a lot more at the Devolution Committee, particularly when it came to the discussions on the regions. It was the same in the committees on Transition, Executive and on issues of Representation which were raised in the plenary and elsewhere. The process took regional and ethnic positions thereby blurring women's voice as a group and making regionalism and ethnicity the major weaknesses of the Women's Movement. Let me elaborate on this:

In the process of constitution making, two of the most contentious issues, as we have seen had to do with power sharing: between the president and the prime minister; and between the central and the local levels of governments.

The Committees on the Executive and that of Devolution were the most fiery. The two committees were always packed. The Executive Committee in particular had the political heavyweights in attendance all the time. On its part, the Devolution Committee had some of the shrewdest politicians of the time such as Hon. Nicholas Biwott, Hon. Joseph Kamotho, Hon. Henry Kosgey, Hon. G.G. Kariuki, Hon. Marende (later to become speaker of the National Assembly), Hon. John Serut and Hon. Zadock Syongo, among others. The Devolution Committee was chaired, first, by the late Crispin Mbai and then by Dr. Adhu Awiti. The Executive Committee had Hon. Martin Shikuku as the Chair. The other politically active committee was that of Transition whose Chair was Ms Joyce Majiwa. Members of this Transition Committee included Hon. Raila Odinga. The mandate of the Transition Committee was to determine when the new constitution would come into effect and how transition would be managed.

We have seen that, the question of the nature of the institutions that would be created and whether these institutions would be friendly to women was an issue that women did not address at Bomas.

Women needed to reflect more on institutions, the institutions' nature, philosophy and values; factors that often lead to undermining or silencing their

experiences and strategies of resistance. By the time, the conference became very divided, leading to a walk out by the government side led by Hon. Kiraitu Murungi, on the last day of the committee of the plenary while their nemesis remained in the plenary to continue with the debate, the issues that were controversial were very few but major namely:-

- whether the provision that made the president head of state; head of government and chair to the cabinet should be retained;
- whether Kenya should have four levels of government, namely, national, regional, district and locational.

The committee that was negotiating these provisions was led by Bishop Sulumeti. Some of the members of this committee were Hon. Raila Odinga, Hon. Kiraitu Murungi, Hon. Ruto, and Hon. Grace Ogot, among others. The provisions were contested. When the government group walked out, those who had wanted the prime minister to be head of government and chair to the cabinet and to retain the four levels of government carried the day. At the end of the day, all other critical provisions were passed by the charged plenary. There was hardly any debate on other issues. The story was over. The plenary, chaired by Prof. Ghai, was in a hurry to complete and adopt the draft constitution because there were rumours that the group that had walked out had gone to court to stop the process. It was a session that left a lot to be desired and one that shocked many.

Somewhere along the line, in the midst of this dramatic hurry, Hon. Ruto introduced a motion to the effect that since the president that was created by the conference was not an executive president, the manner in which he/she was to be elected needed to change. He proposed that a college of local authorities and parliament be the one to elect the president. Although this motion merited serious discussion, it was not debated; it was thrown out immediately.

Then there were those who were proposing to introduce Pastoralist Commissions, Fishing Commissions, etc. Dr. Lumumba, who was the secretary to the conference, walked to where the CKRC commissioners were watching the events in disbelief and exclaimed: "Someone help me, the conference is going wild!"

Prof. Ghai looked very tired but he was determined to complete the adoption process. He stood with his hands supporting his back and his scanty hair almost standing up as the conference, anxiously and mechanically, went through the remaining proposals and completed the process without further debate.

At that moment, many women watched in disbelief at the events unfolding before them. Fortunately for them, they had negotiated their issues before hand, sometimes under very difficult circumstances, and had achieved their goal. But at that moment, politics had taken over the process.

I have gone into details about the last committee of the whole house and the adoption of the draft constitution because at this stage, what was at risk was no longer the women's agenda but the whole constitution. Therefore, I cannot emphasise enough the need for women to focus on the processes, the politics and the institutions along with their issues. Very often, women have been told that they need to focus only on their issues. For many years, they did this. The period between 1992 and 2010 demonstrates that they were focused and clear about their own issues. They worked closely together during the negotiations at Bomas I, Safari Park I, II, III and IV. They facilitated civic education of women and ensured presentation of the views by women from all over the country. Their solidarity and negotiations at Bomas clearly demonstrates that they had properly and completely negotiated their part of the covenant and participated in negotiating the 2nd part of the covenant to ensure state organs did not appropriate the people's power. But as they reclaimed their space in society, they found out that they were overwhelmed by the political power struggles between parties, communities, and regional blocks in these entities' search for co-existence, power and resource control. The governance structures, the electoral processes, devolution of power, and debate on creation of regions sometimes caught the women off guard. Yet, these are the issues that derailed the Constitutional Review Process. Most of us women, talked about reducing powers of the president, devolution of power, among other the issues but we had not thought through issues such as the benefits or otherwise of presidential systems of government, parliamentary system of government, our own historical experiences with the institution of government, regional governments, ethnic marginalisation, the land question and ethnicity, among other issues.

The basket of fruits from the Bomas negotiations

The following is the summary of women's gains at Bomas. It is to be noted, however, that these gains would later be safeguarded throughout the rest of the Constitutional Review Process, a struggle which was to take the next six years. The one major gain at Bomas that was eventually lost as we were about to harvest in 2010 was the 30 per cent women's representation in the National Assembly. Instead, we harvested the special seats, one from each county, which added to about 13 per cent. Nevertheless, we harvested close to 27 per cent senate representation and 30 per cent in county assemblies.

Specific harvest areas in the 2010 constitution

Chapter three: National goals and values

Article 12(2(i)): The state shall ensure full participation of women ... and all citizens in the political, social and economic life of the country.

Article 12(2(j)): The state shall implement the principle that not more than two-thirds of the members of elective and appointive bodies shall be of the same gender.

Chapter four: Citizenship

The right for a woman to confer citizenship through:

Citizenship by birth:

Article 16(1): Every person born in Kenya is a citizen if, at the date of the person's birth, either the mother or the father of the person is a citizen.

Article 16(2): Every person born outside Kenya is a citizen if, at the date of the person's birth, either the mother or the father of the person is:

- a) a citizen who was born in Kenya or
- b) a citizen by registration or naturalisation.

Article 16(3): If either parent of a person died before that person was born, for all purposes of this chapter, that person's citizenship at the time of death applies as if that parent had survived until the birth of that person.

Citizenship by marriage

Article 17(1): A person who has been married to a citizen for a period of at least seven years is entitled, on application, to be registered as a citizen of Kenya.

Article 17(2): Citizenship is not lost through marriage or dissolution of marriage.

Chapter five: Culture

Article 26(2): The functions of the Commission (on culture) are to establish the criteria for recognition and honouring of national heroes and heroines.

Chapter six: the bill of rights

Implementation of rights and freedoms

Article 30(5): All public officers and state organs, and their employees have the responsibility to equip themselves to understand and deal with the needs of special groups within society including women, persons with disabilities, children, youth and members of marginalised groups and communities and of particular ethnic, religious and cultural communities.

Freedom from discrimination:

Article 36(1): The state shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

Article 36(4): Despite clause (1), the State shall take legislative and other measures, including but not limited to Affirmative Action, programmes and policies, designed to benefit individuals or groups who are disadvantaged, whether or not as a result of past discrimination

Gender

Article 37(1): Women and men have the right to equal opportunities in political, economic, cultural and social activities.

Article 37(2): Women and men have equal rights to inherit, have access to and manage property.

Article 37(3): Any law, custom, culture or tradition that undermines the dignity, welfare, interest or status of women or men is prohibited.

Article 37(4): Despite clause (1) the state shall:-

- a) Protect women and their rights, taking into account their unique status and natural maternal role in society; and,
- b) Provide reasonable facilities and opportunities to enhance the welfare of women to enable them realise their full potential and advancement.

Article 40(5): A child's mother and father, whether married to each or not, have an equal responsibility to protect and provide for the child.

Article 40(6)(d): Be protected from discrimination, harmful cultural rights and practices, exploitation, neglect or abuse

Article 40(6)(i) iv): Be treated in a manner, and to be kept in conditions, that take account of the child's disability, gender and age.

Family

Article 41(4): Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.

Rights of persons held in custody

Article 75(2)(h): A person held in custody has the right to privacy, including the separation of women and men, to the extent compatible with the presentation of law, order and discipline.

Chapter seven: Land and property

Article 77(2): The government shall define and keep under review a national land policy ensuring the following principles:-

- (b) Security of land rights for all land holders, users and occupiers in good faith.
- (f) The discouragement of customs and practices that discriminate against the access of women to land; and other properties.

Property rights of spouses

Article 82: A surviving spouse shall not be deprived of a reasonable provision out of the estate of a deceased spouse whether or not the spouse died having made a will.

Legislation on land

Article 86(1): Parliament shall enact legislation to:-

(d) Regulate the recognition and protection of matrimonial property and in particular, the matrimonial home during and at the termination of marriage.

(i) Establish a land fund to enable citizens to gain access to land for public purposes.

Chapter nine: Leadership and integrity

Conduct of state officers

Article 96(2): A state officer shall not:-

(e) Use the influence of their office to sexually or physically abuse any person, or to attempt to obtain sexual favours or the other undue advantage from any person.

Chapter ten: Representation of the people

Part I – The electoral system and process

General principles

Article 101(1): The electoral system is based on the right of all citizens eligible to vote and to stand for election to legislative and elective bodies.

Article 101(2): Voting shall be by secret ballot.

Article 101(3): Elections shall ensure a fair representation of women and men, persons with disabilities, workers, older members of society, youth and marginalised groups and communities.

Article 102(3): In the Interest of Affirmative Action

(a) Five percent of the seats in the national assembly or the legislature of a devolved government shall be reserved for persons with disabilities, the youth, workers and marginalised groups and communities.

(b) Eight and one-half percent of the seats in the senate shall be reserved for persons with disabilities, older members of the society, workers and marginalised groups, and communities. So that at least one-third of these seats go to women.

Part III – Political parties

Basic principles

Article 111(1): A Political Party shall:-

f) Promote and respect human rights and gender equality and equity.

Political parties' fund

Article 113(1): There is established, a Political Parties' Fund.

Article 113(1): A Political party shall be entitled to financial support from the state through the Political Fund as may be prescribed by an act of parliament.

Purpose of the fund

Article 114(4): Thirty per cent of the money allocated by Parliament to the Political Parties' Fund shall be distributed equally among the registered Political Parties annually on date to be prescribed by an Act of Parliament.

Article 114(5): Parliament shall, by legislation, prescribe the method of distribution of the balance of the money allocated to the Political Parties' Fund by reference to the number of voters secured by each political party in the previous National Assembly elections and the number of women candidates and members of marginalised groups and communities elected through the party at that election.

Chapter eleven: The legislature

Part II: Composition and membership of parliament

Membership of the senate

Article 122 (1) (a) One member elected from each district by the district council of the district acting as an electoral college to represent the region of which the district forms part.

(b) Two women elected from each region by an electoral college consisting of all the elected members of the district councils within the region.

(c) Such number of marginalised groups, half of whom shall be women, as satisfies the requirements of article 102 (3) elected after members have been elected under clause 1(a) and (b).

Membership of the national assembly

123 (i) (a) One member elected from each constituency as may be provided by law;

(b) One woman elected from each district, each of which shall comprise a single member constituency;

(c) Fourteen members elected by marginalised groups;

(d) Speaker who shall be an ex officio member.

Chapter fourteen: Devolved government (p137)

219 (i) Election of district councillors

i) District government

(a) One member elected for each of such number of wards, with such boundaries, as prescribed by Act of Parliament, passed after taking into

account of the recommendations of the electoral and boundaries commission.

(b) Such number of special seat members all of whom are women, as are required to ensure that at least one third membership of the council comprises women elected after members have been declared elected under paragraph (a) and

(c) Such number of members of marginalised groups, including persons with disabilities, older persons and youth, provided that at least two shall be persons with disabilities, as prescribed by an Act of Parliament.

Locational government (148)

224 (1) A locational council consists of representatives elected by registered voters who meet the requirements for residence in the location prescribed by act of parliament.

2) An election for the purpose of clause (I) shall be conducted in such manner as is prescribed by act of parliament, being a manner that ensures that equal number of men and women are elected.

Chapter eighteen: Constitutional commissions

290 (2) (a) Entrenches the one third principle

Chapter twenty: General provisions

Definitions

Article 307 In this constitution, unless the context otherwise requires:-

“Affirmative Action” includes any measure designed to overcome or ameliorate any in equity or the systematic denial or infringement of a right or freedom.

These gains were isolated from the Bomas draft by women’s organisations including WPAK, FIDA, and CCGD among other organisations who kept vigil throughout the process.

Summary

It is evident that the women at the Bomas Constitutional Conference did not let down those they represented. The women from the constituencies had given their agenda. The women in the CKRC had ensured that the agenda for Kenyan women was comprehensively tabled at the National Conference and that the women delegates took the baton and ran their part of the relay race.

Let it never be said that women are not great negotiators. The basket full of fruits in the 2010 constitution is a testimony to their capacity to negotiate. Apart from

women's gains that we have listed, "the constitution has one of the best Bill of Rights in the world," so say many experts. The Bomas draft had the 1st, 2nd, and 3rd generation of rights entrenched. It entrenched the social economic rights which majority of our rural women and those living in the slums desperately wanted. It proposed devolution of power to the communities through the district; it mapped out our national values, goals and principles that should guide us as a nation. The draft captured the political institutions, elections, political parties, land environment, security, public finances, and other institutions of governance.

It is clear that social justice is an important theme in the new constitution, so is national unity, diversity, and respect for culture and marginalised groups. Bomas draft has many provisions that ensure the protection of women, children, youth, persons with disability and elderly persons. It had provision for the recognition of communities and minorities and provision for addressing poverty and even regional disparities and almost all these were later reflected in the new constitution that was promulgated on August 27th 2010.

Women had their moments. They demonstrated their love for each other and for their lot. They had received the baton from the women in the CKRC who had ensured women's agenda was in the 2002 draft after having received and collated the views of Kenyans. There were many moments during negotiations where ethnic barriers were broken and where the rural-urban divide, educated versus less educated, the rich women versus poor women, were broken—they had a unity of purpose. Their personal and collective experiences brought them together to form a political force that was felt by the whole conference. It was an experience to behold—a most wonderful experience, a clear demonstration of love and power of women. More often than not, the men at Bomas were afraid of facing this combined women power.

Women's organisational and negotiation skills at Bomas merits special study. I hesitate to speculate what theory explains how women behaved in this particular part of the process. But the theory that will eventually emerge and be adopted must grow from women's experiences as women and be informed by events at the Bomas Conference and thereafter. We cannot emphasise enough that the Bomas Constitutional Conference, the Safari Park negotiations, and other negotiations thereafter, brought the best out of the women of this country.

Of great significance is the fact that women from Kenya's many ethnic communities could focus on what unites them and consolidate their interests and end up with a draft constitution that beats any other in the world in terms of its focus on women, and the whole concept of inclusivity. Kenyans, and indeed other multi-ethnic nations in our region, should acknowledge our ethnic diversities and our values and interests that bind us together.



2005 Referendum: A Dream Deferred

Introduction

The immediate response to the Constitution of Kenya Review Commission (CKRC) Draft by the people of Kenya was that it was the best constitution in the whole world. Leaders said it was the best thing that had happened to Kenyans after many years of struggle to have a new constitution. We believed the leaders were united. We went to Bomas and worked night and day to give Kenyans a new constitution. We were about to give birth to a beautiful, bouncing baby but it was not to be. We thought it was just a difficult birth and “may be, a caesarean could help.” But like bad gynaecologists, parliament was cutting the baby’s face, cheeks and other parts while others beat up the baby as it tried to come out. Eventually, we ended up with a stillbirth.

But women do not give up even after a stillbirth. We got pregnant again and decided that we would nurture the new baby the way we knew how. We also learnt not to trust the gynaecologists. So we designed new methods and new approaches but first we needed to deal with the labour pains of the 2005 referendum.

On referendum

Referendum is a new phenomenon in our political and constitutional experience. It was the Timothy Njoya’s court case of 2002 that introduced the Referendum tool to the review process. In his prayers to the court, Njoya had sought the court to rule that parliament and the Bomas Constitutional Conference had no mandate to give birth to a new constitution, among other prayers. In a lengthy ruling, Justice Aaron Ringera, et al., ruled that only the people through a referendum had the mandate to give a new constitution to themselves. The court having ruled thus, referendum, it was going to be.

The Swiss introduced the concept of constitutional referendum into their cantons in 1830s. They expanded this instrument into their legislative and citizen initiated referendums in 1860. In Kenya, the concept of amendment of the constitution through referendum is in the 2004, 2005 and 2010 draft

constitutions where referendum can be initiated by parliament or by citizens. The idea of a citizen identifying an issue in the constitution and mobilising one million voters to have a referendum is now entrenched in our new constitution.

Prof. Jeffrey Simser, in a paper presented to the CKRC in 2002, noted that a variety of issues are routinely considered by voters in a referendum. He noted that South Dakota in USA started using referenda in 1898 and between 1898 and 1918, 19 American states had adopted referendum. In addition, “The push to give women the right to vote came from the suffrage movement, who used referenda and citizen initiative techniques through 56 campaigns in 29 states; 15 states passed the referendum.” He adds that many US states, with the exception of Delaware, require a proposed national constitutional change to be ratified through a referendum. Citizens can also initiate changes.

Prof. Simser indicates that there are many countries that use this instrument including: the United Kingdom (UK) which used a referendum to consider membership in the European Community (1975); Northern Ireland which used it for membership in the UK (1973); Scotland and Wales (1979) to be independent states; and for issues of devolution (1977). Australia required a referendum to modify their constitution. Italy has had this instrument since 1945. Simser indicates in his paper that referendum as an instrument of constitutional approval and amendment is not unique to Kenya. It has a tradition and a history in many countries and can be used routinely to deal with issues that are critical to a nation. In our case, the introduction of a referendum on critical issues such as the Bill of Rights and Devolution is informed by our historical experience with our independent constitution. It is the desire to protect what we have negotiated over a long time. It is also a way of ensuring that we begin to build a culture of constitutionalism and protect what we most cherish.

James Girling in his paper on the referendum experience in Canada, and who also presented to CKRC in 2002 noted:

Referenda are merely tools of consultation with the voters. They are not ends in themselves, nor are they self contained. In order for any referendum on any topic to be meaningful regardless of whether its results are to be binding or merely consultative, it must be part of a larger process; one that builds both confidence in the process and integrity of its results and provides the necessary information and education to voters so that not only will they want to vote, but also that they will understand the significance of what they are being asked to decide.

I have quoted the two scholars because there were basic problems in our 2005 referendum on the draft constitutions. These issues included:

- Major disagreements at the negotiation period e.g. at the Bomas Constitutional Conference which was characterised by battles between two sides of the same government.

- Bitterness due to what politicians considered betrayal of the Memorandum of Understanding between the group led by Hon. Raila Odinga and that led by President Mwai Kibaki.
- Ethnic tensions which were also politically motivated.
- Desire to settle scores at the referendum because those who thought they had won at Bomas lost at the parliamentary negotiations.
- Politicised civic education where civic education providers took sides.
- Ethnicised and politicised referendum campaigns.
- Use of referendum to consolidate party interests in preparation for the 2007 elections.

Many Kenyans in 2005 owned up to the fact that they had not read the document but would still vote for or against it. Clearly, the vote was not about the draft constitution.

Women's response to the referendum results

Women, as we have seen, were divided along ethnic and political lines as were all other Kenyans during the campaigns for the draft constitution in 2005. Copies of the draft constitution were burnt in some areas such as Kisumu. The characteristics of elections propaganda were alive everywhere. Misinterpretation and misinformation on what was in the draft became the order of the day. Ethnic hatred became part of civic education. For example, "Protecting our government and our President" became the agenda for one side. Manipulation of statistics became regular. Eventually, the draft was defeated in the plebiscite.

The defeat of the draft constitution 2005 in the referendum was for some of us, an arrival at a dead end. For nearly ten years, and for some twenty years of planting, nurturing and watering the seeds of freedom, the curtain fell, a chapter seemed to have been closed, and the sprouting and growing plants dried up in one day. As Elieshi Lema (2001), the Tanzanian novelist says in her novel *Parched Earth*, our hearts and souls had been parched. Our hearts were bleeding, our heads aching, our legs wobbling, life seemed to have ended. The rejection of the referendum draft 2005 with all the gains women had made was locked out and became part of history. Before this day, we had all along been on a road to a clearly defined destination, on a road towards taking our place on the table with the negotiated covenant. It now looked like a bad dream, a nightmare. It looked like a mirage that we had taken for something real. We could not pray or cry. All we had was silence in our hearts, numbness.

"Wanjiku, take refuge in the comfort of your family," read an sms message from my friend General Asuasa.

Our families were in pain too. "Mummy, you have not slept for 15 hours. Go to bed," said my son Mutoria.

“Mummy, I told you to prepare yourself for this,” said my younger daughter, Karambu.

“Mummy, I cannot believe we have lost all those gains for women,” said Nkatha, my daughter, who was working on “Women and Constitution Making” for her undergraduate dissertation at the University of Nairobi’s, School of Law.

“Mummy, why are you so sad, if they don’t want the constitution, leave them alone,” said my third daughter, Wambui, who was then a computer science student at University of Nairobi.

And Kabira, my husband, noted, “The Referendum is lost. It is all politics. What else did you expect? I am off to work.”

My children gathered around me on the bed and humorous Karambu stated, “I want to close all the doors and windows so that you don’t throw yourself out of the window. You stay in bed and sleep. Nkatha, bring her tea.”

This was the scenario in my house. I guess it was the same in many households where many women had spent hours, days, weeks, months and years chasing their dream of a better social order. Many women who had closely walked the path, who had spent many hours, days, months and years working on the draft constitution were in the same situation. Even those who had said “No” in the referendum could not celebrate because they too had lost. It was indeed a lose-lose situation for women and for Kenya. We were stressed by the deferred dream. We needed to sit outside in the sun for our hearts and souls to feel warm again.

“The progressive forces will come back together again, pick up the project, and move on,” said a mobile phone message (sms) from Hon. Gitobu Imanyara. I had met Imanyara many times during the struggle for constitution making; during the negotiation for the Review Act (1998) and even during the nomination of the commissioners. The women’s negotiating team had consultations with him. At one time, Abida Ali Aroni, Nancy Baraza and I, met him at the New Stanley Hotel to discuss the possibility of negotiating for women during his interactions with KANU. So he knew where we had come from and appreciated the pain we were going through.

“We did our best,” said Chebet from Keiyo South. For Chebet, this was the end of the road too. Having been from the Rift Valley Province which was at the time strongly campaigning for the “No” vote while she campaigned for the “Yes” vote, she must have gone through fire. She was very passionate about women’s issues.

“I pray for all of us today. I know what it means for all women,” said Rebecca Cherono of the National Council of Women of Kenya. “The hearts of many women are bleeding. In times like this, you turn to prayer,” she continued. Rebecca Cherono, Daisy Amdany, Beatrice Elachi, Lucy Kariu and many other

women felt that only prayers could heal the wounds caused by this endless struggle. We could tell God to heal the wound, to forgive and take our helplessness to him/her. We all knew that the referendum campaign was not about the draft. We knew it was all politics, politics and politics. Even ethnic interests that were being used by the leaders as excuses for saying “No” to the draft were not to the benefit of the ordinary Kenyans. It was about settling scores among politicians. It was a game of “who would win,” not about the draft constitution. It was the continuation of the battle that had started in the NARC government where some claimed that a Memorandum of Understanding (MOU) had been drafted and agreed upon. They had cut a deal, they said. They had agreed on something which many Kenyans did not know about. Sometimes, we would hear rumours that there were more than two Memoranda of Understandings. But these documents were not public documents. We heard of betrayals by different politicians within the NARC government. “Our people have been betrayed,” we heard. We did not know who “their” people were because we were not part of the agreement.

This “betrayal” and hardline positions had taken centre stage at Bomas during the national constitutional conference. There used to be many groups outside the committees, groups of people who were deliberating on how to counter this or that, sell this or that idea to the delegates, negotiate for this, fight for this, etc. Many of these differences were played out in the Committee on Executives, Committee on Devolution, Committee on Transition and in the Committee of the Whole House. At the end, there was the famous walkout led by Hon. Kiraitu Murungi, the then Minister for Constitutional Affairs, leaving behind the group led by Hon. Raila Odinga, the then leader of the Liberal Democratic Party (LDP). Despite the walkout, the conference, as mentioned earlier, had continued with its agenda and all the remaining chapters were adopted within a few hours. These chapters included the Executive, Devolution, Finance, Public Service, Commissions and Transition. It is to be noted that the three major chapters that were considered contentious were adopted after the walk out. Documents show that there was actually no quorum at the time these crucial chapters were passed. The walk out and the passing of these crucial chapters led to the end of the conference and the beginning of the battle over the draft.

The battle moved from Bomas to parliament, the courts, and finally, it was decisively fought at the referendum. So, once again, from the National Constitutional Conference at Bomas, to Parliament and to the Referendum, the bulls fought, and the grass suffered while, they settled their scores. The bulls that won the political battle celebrated. They had shown they were men, “real men, total men”. The other bulls, out of the mistaken belief that a running government would never lose, that they had the machinery to shake the whole country, had won the battle in parliament but had lost during the referendum. But could the vanquished eat humble pie and accept defeat? Not at all. They

began preparing for the next battle. It came in 2007. The battle was fought. Kenyans died. Both sides reaped the fruits of the blood of Kenyans and settled in a “coalition” that Mutahi Ngunyi called “a fellowship of thugs.” (*Sunday Nation*, December 7th 2008)

It is this struggle for political supremacy, for political control that led to the defeat of the referendum. To the defeat of the struggle towards a new constitutional dispensation that Kenyans have worked for, for years. Women, like the rest of Kenyans, were sacrificed at the altar of political power games, self interest, greed for power, masculine type of politics, ethnic politics and sheer lack of commitment to the people of Kenya.

“I am dumbfounded. I can’t believe it,” said Prof. Shanyisa Khasiani in a mobile telephone message to me. Her disbelief represented the feelings of many women after the referendum. Messages were exchanged among the women. One of them came from Lucy Githaiga, who was pregnant with her third child. She viewed her pregnancy as a symbol of the coming of the new constitution, a new dispensation where women would not be children of Idemili, the Ibo’s lesser god but of Ulu, the higher God. Women had seen the birth of a new constitution as a new beginning. They wanted to nurture the pregnancy and be there when “the water broke” so that they would ensure that we give birth to a bouncing baby.

Daisy Cherop Amdany, whose passion for the new constitutional dispensation was unparalleled, could only say to the rest of us, “The Lord knows why He is doing this.” She too could only say, “Let us wait for God to show us the way.” Daisy, a courageous woman and forceful in her presentation, had confronted many members of parliament, telling them they had the responsibility to safeguard women’s gains in the draft constitution. She would look at them with those big, rolling eyes and challenge them in a manner that communicated to them that “real men support women empowerment.” She was tireless in her effort, in defence of the women’s gains. So, for Daisy, the beautiful daughter of Amdany, the mother of a young warrior, the defeat of the draft constitution was like the end of the road. Again, as Elieshi Lema notes in *Parched Earth* – and I know Daisy would agree with her – negotiating for the double covenant was for women “like being married to the process and holding on to the idea of your destination.”

Being in this marriage was like walking in the rain, in the cold wet season, without an umbrella. You get soaked through to the skin and before you know what happened, you get possessed by the rain, by the wet clothes that cling to your body marking its curves like claimed territory.... You cannot choose between standing still or taking off your clothes, because there would be no difference at all ... The choice open to you, is one, walking on, clothes and all, this way you at least meet the rain head on, meet it and leave some

of it behind as you walk, as you make the inevitable movement forward.
p.141

Immediately after the 2005 Referendum, Mrs Orimba, the chair of Widows and Orphans, said to me, “Ah, ah. Let us not talk. What is there to say?”

Mrs Orimba is a woman who would never allow you to forget *Widows and Orphans*. It did not matter to her what women were discussing, whether it was Electoral Processes, Affirmative Action, Land, Bill of Rights, Environment, anything. Mrs Orimba would just ask the women, “Have you put widows and orphans there” You ask, “Where is *there* Mrs Orimba? She would answer, “*there*” I can see you writing, so whatever you are saying, include widows and orphans.” So, for her, widows, orphans, persons who are physically challenged, and minority communities, among other marginalised groups, the defeat of the constitution was a major blow.

Many women were deeply saddened by the loss of the 2005 referendum. Among them was Mrs Nyathogora, a former delegate from the National Constitutional Conference who sent a mobile text message saying, “This is a nightmare, Professor. How can they do this?” Hers was a message that captured many women’s thoughts, after the 2005 Referendum.

Other women with whom we shared the loss included:

- Prof. Shanyisa Khasiani, a former Chair of Association of African Women Research and Development (AAWORD) who has been in the Women’s Movement for as long as I can remember. She said, “I am dumbfounded. I have no words.”
- Happy Gloria, for whom defeat had been out of question, a sent a message stating, “Prof., tell me it is not true.”
- Daisy Amdany said, “The Lord must have a reason for this and He will reveal to us. Our Lord is never defeated.”
- “I can’t stop crying,” said Nancy Baraza, a lawyer and a former commissioner in the CKRC. She said, “Wanjiku, all the efforts we have put into this journey are wasted.” She too was in such great pain that only those who travelled the road with her could understand. She said her stomach was rumbling, her head was paining, that she was numb. “That makes the two of us,” I said to her.

And Mary Wangari Kariuki (Mama Karanja) said, “I did not sleep; I can’t believe it.”

My sister, Wangari, who had travelled with me to Rift Valley, Eastern, Coast, and Central provinces and, who believed that we were moving to a new era, could not believe it. “I am in shock,” she said.

Dr. Eddah Gachukia, almost seventy years old by then, asked,

“What did we not do? We cannot lose the women’s negotiated proposals after all the struggle. For more than twenty years now, the word Affirmative

Action has been on the lips of all women. We have been put to shame in our region, and indeed in Africa, for having the lowest number of women in parliament. Even countries that have been at war like Somalia have Affirmative Action. They have 12 per cent. Tanzania has had Affirmative Action introduced by Nyerere for over 30 years. Uganda has Affirmative Action; our small African country, Rwanda, is leading in this area. It has even overtaken Europe in this issue. Is Kenya cursed, Wanjiku?"

"I don't know," I said to Eddah, "I no longer understand anything."

But Dr. Eddah Gachukia continued, "Don't stay too long in the blues. You must pick up the pieces and trod on. The journey is not over yet, we must move on."

Dr. Eddah Gachukia was the NGO Chair for the UN conference in 1985 which was held in Nairobi. She is a woman of undivided loyalty when it comes to women's agenda and in particular, on girls' and women's education. Her name is synonymous with girls' education. She has been an inspiration to many and I am proud to have been associated with her. She introduced me to the Women's Movement in 1983 when she was preparing to host the 1985 United Nations Conference. She is a woman of great commitment, one who never wavers and who keeps her eyes on her goal. Many people know her. We should sing her praises because Eddah says that she has told her children, and by extension, all other children in the movement, that when she dies, we must sing songs of praise and just celebrate her life. She feels very blessed that she has lived that long. She says that her mother died when she was only six years old. When she got her own children, she used to pray to God that she lives long enough to see her last child, Juju, reach the age of 16. After that, she would be ready to die. In 2005, Juju must have been in her mid thirties and her mother kept saying that her own life was now a bonus. I am sure Eddah speaks for many women. They want to live long enough to ensure their children are able to survive in this often cruel world.

Kamla Sikand, a Kenyan of Asian origin, is a woman whose spirited energy for the negotiations for women's interest never seemed to waver. It was in the home of Mr and Mrs Sikand that for months and years, women gathered to review their progress, to monitor what was happening and to strategise. Women of this country will forever be grateful to Mr Sikand for the support he gave them. He would be in one of the rooms and would allow us to weep for losses of the women's gains, sometimes with energetic young women such as Daisy Amdany, Beatrice Elachi, Lucy Githaiga and many others. We would laugh, make noise, but he was happy that we had made progress. For example, the night the debate to amend the Bomas draft in parliament was going on, many of us had gathered in the couple's house. Some of those present were: Wambui Kanyi, Maimuna Mwidau, Lucy Githaiga, Daisy Amdany, Beatrice Elachi, Lucy Kairu, Ted Olang, and Chebet, among others. We sat in the

couple's sitting room in anticipation. We knew that there were efforts by Dr. Bonny Khalwale, and Hon. Raphael Wanjala, and others to remove the Affirmative Action for 30 per cent women's representation. We had been informed beforehand by Hon. Betty Tett, a nominated MP for Westlands, and Hon. Adelina Mwau as well that such a plan was in the offing. Hon. Paul Muite had promised us that he would monitor and that he would also talk to Hon. Simeon Nyachae about it because the one third women's representation was not one of those identified as a contentious issue. We had also talked to Hon. Justin Muturi, the then Kanu whip in parliament. He too had agreed to bring in a counter motion to the one brought by the NARC government through Khalwale.

I personally had gone to Hon. Kiraitu's house at 7 a.m. to find out whether he and others would protect the women. He had said he would try. I then asked him if we could talk to the president and he said the president would be away that morning. I had then called Abida Ali Aroni, the then chair of the commission and we met at the Kobil Petrol Station opposite Bomas and agreed to contact Paul Muite who then gave us the number for Hon. Muturi. We also called Adelina Mwau, a very committed member of the Women's Movement who swung into action to mobilise those forces within NARC sympathetic to women's cause. She went to Prof. Kivutha Kibwana who immediately began lobbying. The 30 per cent women's representation survived the onslaught then.

Let us now go back to Mr and Mrs Sikand's house. We sat there waiting in anticipation. With great anxiety, Mr Sikand would ask, "Do you have enough tea? Everything will be okay." Hearing Mr Sikand's encouraging voice was wonderful but we had had so many fights for so many years that we understand our parliament so well—anything unexpected was possible. Everyone knew we had had a parliament "*itarĩ thoni kana rūbutu*" (shameless, lying without blinking). They had for ten years, between 1997-2007, from the time Phoebe Asiyo tabled the motion and 2006 when they defeated the constitutional amendment that had proposed 50 special seats for women's representation tabled by Hon. Martha Karua; defeated all efforts to ensure Affirmative Action and resisted and rejected even efforts to make a presidential directive into law. It was a parliament where men had demonstrated great insensitivity to women's agenda.

I doubt that many people will ever understand the pain, our pain, and the pain of all women after the 2005 referendum defeat. It was pain that one could not describe. Pain all over one's body and dumbness too. One felt the stomach tightening, the chest was tight, the head numb and the soul was in pain. That is how it was. Similar pain was to be experienced five years later when the Parliamentary Committee reviewing the Harmonised Draft in Naivasha in January 2010 removed Affirmative Action of 30 per cent of women's representation in parliament. The women went quiet, tired and numb. They had

been sacrificed at the altar of political and ethnic interests in the name of equitable representation.

With the defeat of the 2005 draft constitution, a long journey had come to a dead end. Many questions were lingering in our minds:

- Why this overwhelming hatred and fuelling of ethnicity by our people?
- Why did the women not see the propaganda that was used to defeat the constitution?
- Why did they buy into the propaganda?
- How can they go to the river, fetch the water in a pot and spill the water at the door of their house?
- How can ethnic hatred make women reject their own gains which they had fought for, for so long?
- What should we have done that we did not do?

I consulted women who said ‘No’ and those who said ‘Yes’ to the draft and confirmed that even the civic education that was carried out was also a political process for it had promoted ethnic chauvinism. In many cases, the campaign for the referendum was not about the document. It was about ethnic and political interests. A lot of propaganda had been used to defeat the draft. Some of the propaganda related to women included the issues that “women would inherit land from their parents and that this would break up families. That those married would come back home and those not married would refuse to marry” and “girls getting land where they were born would promote incest,” among other issues.

In chapter 8, I have reflected on the question of ethnicity, primary identities and the women’s struggle. I have discussed how we women get caught up between our primary identities, collective memory and communal history, among other issues.

Women had walked the path of constitution making with deep love for each other; but when you love passionately, you get hurt most deeply. If you are indifferent, you are not vulnerable. That is why the pain of the loss of women’s gains could only be felt by those who love both women and womanhood deeply. Women cared for each other. There were many women who felt this loss. Those who had been in the struggle for a long time and had passed over the baton to other women to complete the race watched the loss in bewilderment. Even those who were in the ‘No’ camp could not celebrate. No one celebrates a loss. Women could not celebrate loss. Since we knew which of us had said ‘Yes’ and who had said ‘No’, we did not discuss the issue whenever we met. We moved on and began focusing on the future. That’s how the women in the ‘No’ and ‘Yes’ camps came together again with the same passion in 2006 to discuss the 50 seats and later to audit the Harmonised Draft.

Muthoni Likimani, a woman who had been writing for many years and had committed herself to writing on the Mau Mau with her first book being *Passport No. 84*, said to me after the referendum:

“This has been a long struggle. Do not worry; all good things have to be fought for. Wanjiku, many times, those who plant are not the ones who harvest but you cannot stop planting. You must always plant so that when the rain comes, the seeds will sprout. This rain was only *mahahūra igūta* (that drizzle that sends the lazy ones back home scampering for shed). But Wanjiku, you are not a lazy one so you stay in the field and continue planting. In future, though, check with other strugglers like me and those who have weathered time and they will tell you whether the pending rains are real rains or just signs of rain. They will tell you whether it is the “hyenas that are marrying” (when you mistakenly think rain clouds are forming). There are many who claim to be prophets and often they have no clue what they are prophesying about. They may not even be false prophets like those foretold in the Bible. They are just ignorant prophets. Those who prophesy things that they do not know about.”

It was wonderful to listen to Muthoni who was then over eighty years. She put things in perspective. She, like many other Kenyan women, had weathered many storms.

Women seemed to go their different ways after the referendum, which was understandable. There were many things to be sorted out, many questions to be addressed. One of the many questions was how to deal with the question of ethnicity. The fact that women’s issues were tied together with power issues, which were at the centre of controversy and disagreements, meant that we had to deal with our strategy and reflect on how to deal with negotiating the Double Covenant.

Thus, although the draft constitution was defeated by the November 21st 2005 plebiscite, women’s work and solidarity was to continue. The defeat of the draft constitution did not deter women from coming together again to pursue their common goal; and so they did again as shown in Chapter 8 on the Harmonised Draft Constitution 2009. It too would later go to the referendum.

Summary

This section has dealt mainly with women’s response to the defeat of the 2005 draft constitution and experiences of women who felt that despite the power struggle orchestrated by parliamentarians, the power game of the different NARC functions and the struggle over regional blocks, women had retained most of their negotiated issues and needed to safeguard them. Well, these gains could not be safeguarded unless the whole constitution was safeguarded.

The lesson we learnt from the defeat of the 2005 referendum is that our gains are so closely intertwined with the ethnic and regional interests – primary identities – that women have to find a way of dealing with them. I have shown that the issues that were contested were not issues we had addressed as women. We did not have a position on the system of government, whether we were going to have a parliamentary, a presidential or a hybrid system of government. We had not dealt with the structure of devolution as women. We had talked about district governments but on such issues as taxation powers, we had not dealt with. We had not dealt with the nature of the legislature, whether we needed an upper chamber or not and for what purpose. We had not addressed transitional clauses.

As Women's Movement, we did not have positions on these issues. We, however, worked out positions on issues such as representation at all levels, inheritance and provisions on the Bill of Rights in more details. It turned out that the issues that became highly contentious were power and religious issues which we discuss next. The journey towards reconstructing a process that would help us pick up the pieces and begin the journey again would begin in 2006.



The First Season of Harvest

Introduction

Women came together in 2006, to address the question of the bill that the Minister for Constitutional Affairs had prepared and which included an affirmative action provision to, include the number of women in parliament by 50 seats, as the constituency boundaries were being reviewed. We formed the National Women's Negotiating Team. We solicited one million signatures collecting over 600,000 signatures in a few days. We received petitions from every constituency and we made history by being the first organised group to bring these petitions and signatures to the Clerk of the National Assembly, the late Samuel Ndindiri. Despite this achievement, we lost. But women continued to meet to monitor what was going on in the review process, and to struggle to get into the process. We had to because others who have been on the line of duty handed over the baton to us. We are on a journey; we had to reach our destination. Women like Maggie Gonna, Wanjiru Kihoro, a great daughter of Africa have also passed on. So too have Rahab Wabici, Priscilla Obwonya, and Wanjiru wa Kaguru, among others. I am afraid that these women and many others before us would have turned in their graves if we had failed to carry on the struggle.¹⁰

Negotiating the contested issues and the 2010 Constitution

After the Bomas Conference the collapse of the process following the Timothy Njoya's Constitutional Court Case and the 2005 referendum defeat, women felt that they could not let the gains they had achieved in the Bomas Draft go to waste. They did everything possible to organise and participate in all possible initiatives to monitor and safeguard these gains. They felt that having negotiated so much and achieved so much at Bomas, they could not risk losing their gains.

¹⁰ In the course of writing this book, other great women who have been in the struggle like Prof. Wangari Maathai and Mrs Wambui Otieno-Mbugua passed on too.

The Post Bomas period saw a group of young women take charge of protecting women's gains. They formed the Women's Consensus Group. Most of these women were between thirty and forty five years old. They were focused, articulate and energetic. There were also very many other women involved in similar processes, all organised around safeguarding women's gains. They lobbied to have the Bomas gains retained and they had much success in their effort. They also mobilised for women's participation in the Multi Sectoral Forum which was co-chaired by Mrs Ann Njogu, one of the most vocal women during this period.

As indicated in Part I of this book, there were various efforts towards re-starting the constitutional review process. However, the law to restart the process and negotiate the contested provisions and chapters was not passed by parliament until 2008 as the *Constitution of Kenya Amendment Act 2008*. This law reiterated that the sovereign right to replace the constitution "rests collectively in the people of Kenya and shall be exercised by the people of Kenya through a referendum." In addition, the law indicated that this was in line with the court decision in response to the Njoya case of 2004 in which Rev. Timothy Njoya, with co-applicants, won the landmark constitutional case against the Attorney General and the Chairman of the Constitution of Kenya Review Commission on the Referendum.¹¹

When a draft constitution proposing the replacement of this constitution has been introduced into the national assembly, no alteration shall be made in it unless such alteration is supported by the votes of not less than 65 per cent of all the members of the assembly (*Constitution of Kenya Amendment Act 2008 p. 1*).

This may have been introduced in order to avoid what had happened in parliament when the Bomas Draft was tabled and where major changes through a simple majority, were made and the battle over the new constitution had been taken to the referendum and became a battle ground for the government and the opposition. The introduction of this provision in the 2008 law proved to be a very important provision given the tendency of our parliament to totally disregard the views of Kenyans. As a result, close to two hundred motions to alter various sections of the Harmonised Draft failed to get the 65 per cent threshold provided by the law. Parliament, through the Parliamentary Select Committee (PSC) meeting in Naivasha, had made fundamental changes including the introduction of a pure presidential system of government and dropping the position of prime minister a proposal which had come from Kenyans. The PSC had made changes that did not really respect the wishes of Kenyans. For women, the loss of a thirty per cent women's representation in the National Assembly was major, but they comforted

¹¹ Njoya and others v Attorney-General and others High Court of Kenya At Nairobi, Ringera, Kubo JJ and Kasango Ag J
Date of Judgment: March 25th 2004 Case Number: 82/04

themselves with the knowledge that they had close to thirty percent in the Senate and thirty percent in County Assemblies.

The law had given the powers to the Committee of Experts to identify contentious issues based on the Constitution of Kenya Review Commission (CKRC), Bomas, and Wako Drafts and build consensus around those issues. The committee was co-chaired by Nzamba Kitonga and Atsango Chesoni. The law establishing the Committee of Experts, as in the previous CKRC Act, indicates that the object and purpose of the review of the constitution was, as indicated on pages 5 & 6 of the Review of Constitution Law 2000 to:

“...secure provisions there in guaranteeing peace, national unity and integrity of the Republic of Kenya in order to safeguard the wellbeing of the people of Kenya and to establish a free and democratic system of government that guarantees good governance, constitutionalism, the rule of law, human rights, gender equity, gender equality and affirmative action.”

Once again, women organised themselves and presented their views to the Committee of Experts. As always, they had called each other, discussed the contentious issues and since they had been in the process all along, they knew what had been identified as contentious. The organs through which the review of the constitution would be completed were:

- The Committee of Experts;
- The Parliamentary Select Committee;
- The National Assembly;
- The Referendum.

The Act provided the basic principles as they existed in the Act establishing the CKRC. The functions and powers of the Committee of Experts established in 2008 included¹²:

- a) Identifying the issues already agreed upon in the existing draft constitutions;
- b) Identifying the issues that were contentious or not agreed upon in the existing draft constitutions;
- c) Soliciting and receiving from the public written memorandum and presentations on the contentious issues;
- d) Undertaking thematic consultations with various stakeholders.

Women’s presentation to the Committee of Experts

Women again took the challenge to participate as effectively as they could in this process. They had learnt from aborted efforts that their gains were tied by a blood knot to the gains of the nation with particular emphasis on issues of

¹² Page 18 to 19 on the Act 2008

power sharing. They, therefore, decided to focus on the power issues that led to the Bomas and Wako draft problems. They organised themselves again, coordinated by major women's organisations such as Federation of Women Lawyers (FIDA), Women's Political Alliance-Kenya, Caucus for Women Leadership, and G10, among other organisations. Participating in the consensus building on the issues at this stage was quite difficult. In line with the terms of reference for the Committee of Experts (CoE), women re-stated that women's issues were not contentious. Therefore, CoE could focus on the major contentious issues. Women's Organisations identified and prepared a list of contentious issues. As always, women were methodical and developed the process of identifying the contentious issues. The process had the following guidelines:

- Analysis of both the Bomas and Referendum drafts;
- Media articles on the Bomas conference process, after Bomas deliberations, referendum period and after;
- Debate during referendum on the new constitution;
- Parliamentary data on Bomas draft and the Referendum draft.

Then they had various consultations with women and organised meetings specifically for input and validation by women leaders and organisations.

Having reiterated that most of the proposals on both the Bomas Draft and the Referendum draft were not contentious as demonstrated by a close comparative analysis of Bomas and Referendum drafts, women, like many other stakeholders, identified a number of areas of contention. In particular, the following areas were listed:

Chapter eleven on the legislature

Women noted that, Bomas Draft had two chambers while the Wako Draft had one. In women's view, there was need for further discussions on these issues particularly on the upper house and its role in protecting devolved governments. They proposed that the Senate be reinstated if the constitution was to fully secure the independence of devolved governments.

In the same chapter, women further noted that most of their gains had been retained. While the Bomas draft had the 74 districts as special women constituencies, the Wako draft had removed the districts but had retained the principle of 30 per cent.

Chapter 14 on devolved governments

As with all the other stakeholders, women also identified the chapter on devolution as a contentious chapter. They carried out a comparative analysis and showed that while both the Bomas and Wako Drafts agreed on the District as the principle level of devolution, Bomas had Regional Governments (article

211) while the Wako Draft did not have them. Instead, the Wako Draft had established “National Forum for District Governments and other Fora” whose function was to consult and coordinate inter-district matters, among others (Article 206). In addition, the Wako Draft had removed the locational governments where women had negotiated fifty percent representation.

In summary, the differences were as shown below in terms of levels of government.

Bomas Draft	Wako Draft/Referendum Draft
National Government ↑ Regional Governments ↑ District Governments ↑ Locational Governments	National Government ↑ District Governments

It is important to also recognise that the Bomas Draft had direct elections of the district governors while the Wako Draft had removed this provision.

I have gone into details on devolved government because women consistently wanted devolution of power to be entrenched in the constitution. After long discussions, we agreed that there were key questions that we needed to address. In discussing the design of devolution, it was important to reflect on some critical issues including the following:

Right of people to participate

Women have consistently argued that Kenyans have and must have the right to participate in their own governance and in the process of their own social, economic and political transformation. This belief in the rights of the people to participate at all stages and in decisions that affect them guided our debate on devolution. People’s rights were reflected in chapter 3 on principles, goals and values, principles guiding devolution, and the chapter on the representation of the people, legislature, and other chapters. We argued that participation of the people was both desirable and a right because in the process of participating, the people learn, influence and shape their lives. They may/should get rid of

attitudes of silence, accommodation and passivity and, therefore, gain confidence and abilities to alter unjust conditions and structures.

This belief in the capacity of the people to transform their lives recognises the power of the people to learn through action/participation and creates and promotes construction of practices that strengthen hope and growth of human spirit. In the devolution design, we therefore needed to ask ourselves whether the design would:

- Promote greater participation of the people in their own governance, mobilisation of resources and decision making;
- Promote greater empowerment of the people to be able to shape their lives;
- Promote social, political, economic and cultural lives of the people (Man does not live by bread alone), thus moving towards self-actualisation;
- Facilitate people's potential to determine their own destiny, enhance their capacity to release their energy and be more productive, less wasteful and more efficient.
- Allow more people to participate much more in their policy development and implementation processes?
- Promote innovation at the regional/county levels and promote regional/county and national welfare;
- Ensure mutual social responsibility; that is, shouldn't we be our brothers/sisters keepers?
- Recognise social, cultural and ethnic diversity and believe in the right of these diversities to thrive in a unified nation.

Women argued that devolving power to the people would:

- Safeguard and promote the diverse cultures of Kenyans. "We may want a plate of salad with green, yellow, white and brown colours and not one with only *irio*," to paraphrase Sunkuli at the Safari Park Negotiations.
- Ensure that all Kenyans and communities have a right to promote and develop their cultural heritage and that they needed to be encouraged and supported to do so.

There was also need to ensure that minority communities had a place in devolved governments. Women understood what it meant to be on the periphery, to be marginalised, so they consistently carried with them the issues of the minority groups. We therefore raised questions that ensured greater participation of women, minorities and other marginalised groups in all aspects affecting their lives as well as recognised the rights of the marginalised and minorities as human rights. The nation had the responsibility to ensure that minorities and the marginalised were taken care of.

Women argued that they had to translate their philosophy into strategies that ensured they achieved their objectives. Concerns such as:

- Reducing abuse of power by the central and the devolved governments;
- Enhancing efficiency in the management of national resources;
- Ensuring efficient administration at all levels;
- Creating friendly environment for people to be productive;
- Utilizing equalisation mechanisms; and
- Promoting self-rule at the devolved government level was debated.

It is important for us to realise that women focused much more on these issues during this period. It was a lesson learnt from the lost 2005 referendum that our gains were tied together with those of other Kenyans and that we needed to put our experiences, knowledge and worldview into defining the power structures that the new constitution would establish.

In relation to the design, consideration included responding to issues such as:

- Units of devolution and the economic, demographic and geographic circumstances.
- A clear definition of the Unit to which power was devolved.
- Balance between autonomy and need for a unified nation, that is, how we could avoid fragmentation of our territorial attitudes, among others.

Women considered the financial arrangements between the centre and the units, for instance, details of sharing resources and opportunities, division of power in relation to raising of revenue, establishment of criteria for assisting less endowed units, that is, the equalisation principle and insisted that this should be set out. Even at the Bomas conference, women had raised issues of the percentage of resources allocated to the local units. We had proposed that 30 per cent should go to the devolved units. We also proposed that the powers of each unit should be clear and the areas of interface explained. Thus,

- Ensure viability, particularly in deciding the powers, functions and structural arrangements of devolved units.
- The need for the county governments to have powers to develop their region/county specific policies according to local needs and preferences e.g. a livestock policy in the north eastern region/county, or in the lake region a fisheries policy.

Women continued to debate these questions even as strategies on how to safeguard their gains in the Harmonised Draft were put in place.

In discussing the Harmonised Draft, women were now wiser. They laid special focus on devolution and the executive – the key areas that had been identified as most contentious – in addition to guarding their gains.

The chapter on the executive

As in the case of the chapter on devolution, the chapter on the executive had always been contentious, and remained so. The struggle for the adoption of a parliamentary system of government or a presidential system linked to this was the decision on whether to have a unitary system of government or a federal system. It is the debates on both devolution and executive as well as transitional provisions that had created the boycott at Bomas.

At Bomas, there were many consensus initiatives that were formed to help the conference agree on these two chapters. The consensus was actually never built, contrary to the myth that there was agreement at Bomas. The last day of Bomas, as I stated earlier in this book, saw these three chapters passed by one group of delegates while the group aligned to the government, led by Hon. Kiraitu Murungi, walked out of the conference. With those delegates that remained Prof. Ghai went ahead and passed the chapters that continued to haunt the review process.

The debate on Harmonised Draft at Naivasha by the parliamentary committee on the constitution, led by its chairman Hon. Abdikadir, baffled both friends and foes by presenting the country with a pure presidential system after ten years of fights over the nature of the executive the country should adopt. One day, Kenyans will probably know what went on behind the scenes. In addition to “magical” agreement on the executive the removal of the position of the prime minister, one that Kenyans had repeatedly said they wanted, was equally baffling. Trust Kenyan politicians to do exactly the opposite of what the people want.

Women’s position on the executive

After extensive analysis and consultations, women held a meeting at the All Africa Conference of Churches in Nairobi co-chaired by FIDA, Women’s Political Alliance of Kenya (WPAK) and Caucus for Women Leadership, and agreed as follows:

- That they had no problem with a dual executive for there was enough power to be shared;
- There was need to dismantle the culture of control and domination and replace it with that of love for self and others;
- There was need to move away from hierarchical power structures;
- Kenya could create a system that honoured our differences, interdependence and wellbeing of our ethnic communities. A system that could help us relate with respect, equality, freedom and justice;
- We had to think of leaders such as Mahatma Gandhi and Martin Luther King;
- Promote democratic leadership that would facilitate dialogue on the national goals.

Women argued that we, the citizens of this country, have enough power to share. For women power is limitless, the more power you share, the more you empower every one and the more power there is for all of us. They went ahead and presented to the Committee of Experts the proposal on the executive which affirmed that their proposal was to introduce a “shared executive with clear pecking orders.”

The proposals on both devolution and executive by women were very important because women had by now recognised that their gains had been lost because of the disagreements on the two chapters in particular. They recognised that the retention of their gains was tied to the political agreements on these power issues.

On women’s gains in the harmonised draft

Women again audited their gains in the Harmonised Draft and were happy that the Committee of Experts had retained them. However, before we could celebrate the retention of most of the critical provisions, the Parliamentary Select Committee did the unthinkable. We had hoped that with women leaders as members of the Parliament Select Committee, no one would remove the Affirmative Action principle for women’s representation, particularly in the National Assembly. It had been a struggle to have the principle in the constitution; a struggle that had united women for almost 20 years! But with the stroke of the pen, parliamentarians, true to their disregard of the people’s struggle, removed provisions that had survived through the whole period of the struggle for the review process. They had no apologies to make, they said. There was consensus on this and other issues. For them, they were dealing with the bigger picture. Apparently, women were not part of that bigger picture.

Again, women negotiated, lobbied, mobilised and even prayed. But the PSC did not consider them important enough to reinstate the removed provisions. The Orange Democratic Movement (ODM) and Party of National Unity (PNU) re-negotiations that followed never even mentioned the deleted provisions on women. They were dealing with the “bigger picture.” Women, who never give up, they came together again and sent an appeal to the Committee of Experts.¹³

After a number of weeks, waiting with the pain and the aches of the loss of some of the gains that women had negotiated and guarded with particular reference to the fact that they only got 47 seats in the National Assembly which were to come from the counties, they began to call each other up again. For a majority of them, women’s representation in the National Assembly had become the major rallying call. They had guarded that provision throughout the process. So, for some, all the gains had gone. Others had given up. Many started saying that the Women’s Movement had died. It had fragmented. It had scattered. But many of us knew this was not true. For as Margaret Ogola says,

¹³ See appendix VI

“For the great river starts its journey as a little stream which at first meanders, sometimes disappearing underground altogether, but always there, always moving towards the sea.” (Ogola, M.P.17)

Some had taken a break; others were too exhausted to sustain the struggle, while others kept calling each other and encouraging each other to hold on. For example, I had the following conversation with Deborah Okumu, Director of the Caucus for Women Leadership:

Debora: Yes, Wanjiku.

Wanjiku: How are you? The last time I talked to you was after the one third women’s representation in parliament was dropped from the draft. You told me you had spent two days trying to heal the wound and it had not healed. You told me you needed time.

Debora: Yes, I still cannot believe it happened. I keep thinking that I am dreaming.

Wanjiku: You are not.

Debora: So what do you think? Are you thinking what I have started thinking?

Wanjiku: Yes, Debora. I am thinking what you are thinking

Debora: So, we count the gains that we have and mobilise the women to support the draft in the referendum.

Wanjiku: Yes. That’s what I think we should do. This will be our first harvest if the document goes through. There will be future harvests.

Debora: Hey, I have reflected on it too. I think we can take what is there. After all, our county is still here. We have substantial representation in the upper house and there are many other gains. Let us call the women. We need to move on.

Wanjiku: Agreed, Debora. We should harness what we have and move on.

Women agreed that we had to learn to appreciate whatever gains had remained and in the Harmonised Draft, they were many. Women had come to realise too that “the hand that rocks the cradle does not rule the world, it just rocks the cradle.” Those great men and women like Harriet Tubman, Sojourner Truth, Winnie Mandela, Angela Davis who have contributed to the improvement of millions of people, rocked the cradle. We agreed that this constitution would change women’s lives and society as a whole and we would consolidate what gains we had and continue to water them until they bore more fruits. For the moment, we needed to prepare for the harvest. We agreed that although we got 13 per cent in the National Assembly, through the 47 counties, we should nurture these and through the open seats competitions, add others to move towards 25 per cent initially. We agreed too that we should ensure that the counties remain training grounds for women and that we should ensure the best

women got there so that they could help transform legislature and protect women's interests as they walk towards transforming our institutions.

Women would also nurture the gains of their representation in upper house where they got 25 per cent. In addition, we should nurture and cherish the 30 per cent women's gains at the counties level and ensure that women changed the way our local governments would be managed since we had the critical mass. Most of women's gains in the Land Chapter, Bill of Rights, Citizenship, Representation of the people, among others, remained. We celebrate this. It is a great harvest.

It must not be forgotten that the provision of 30 per cent women's representation was what joined the women and their organisations at the hip. It was the rallying point for women. That was why it was so painful when it was removed. In addition, women could also not imagine that this provision would be removed in the presence of their gallant women leaders—those that had been at the battle front. I remember asking Hon. Beth Mugo, she of the Affirmative Action motion discussed in *Part I* and who was among those in Naivasha, how this happened. She said:

“You know, Wanjiku; it was very difficult, very difficult. We also had to look at the larger picture. Let us build on what we have now and move on.”

And so we did.

We want to say with Alice Walker in her poem on sight:

On Sight
 I am so thankful I have seen
 The desert
 And the creatures in the desert
 And the desert itself
 The desert has its own moon
 Which I have seen
 With my own eyes
 There is no flag on it.
 Trees of the desert have arms
 All of which are always up
 This is because the moon is up
 The sun is up
 Also the sky
 The stars
 Clouds
 None with flags.
 If there were flags, I doubt
 The trees would point upwards
 Wouldn't you? (Evelyn C. White 1994:285).

Women also agreed that like the trees of the desert, they would continue to look up where the moon, the sun, the sky, the stars and the clouds are. They had to continue looking upwards and moving on. This was the first season of harvest, there would be many more.

The 2010 referendum

The 2010 Referendum took a new dimension. The unity between the two principals, that is, President Mwai Kibaki and Prime Minister Raila Odinga, was useful in bringing together the political elite, by and large, with an exception of some politicians mainly from the Rift Valley region allied to Hon. William Ruto who had fallen out with Hon. Raila Odinga. The Church also rejected the draft constitution on the grounds that it legalised abortion. In addition, the church rejected the Kadhi's courts in the draft constitution. The 2010 referendum's 'Yes' was, therefore, led by politicians on one hand, and the 'No' vote by the Church leaders on the other. It was a battle for the people's votes by these two sides.

Once again, many Kenyans were in a dilemma with those leading them politically and others who led them spiritually contesting and advising them to vote on the side they considered appropriate. Civic education, therefore, for the church and politicians moved from understanding the whole draft to issues of abortion, Kadhi courts and land. There were various proposals to build consensus but many people were tired of this process that seemed never to end. Long before 2010, the promise of a new constitution had become the trump card for all those who wanted to be at the head of leadership in Kenya from 1992, 1997, 2002 and 2007.

Churches and abortion

After the Parliamentary Select Committee tabled the draft in March 2010 after many efforts to build consensus had flopped, members of parliament proposed close to two hundred amendments. These focused on the Bill of Rights, Judiciary, Devolution, Representation of the people and Legislature, among other amendments. They went through the formalities of tabling the motions, seconding a little debate here and there, walk outs, and so on. Kenyans were treated to a circus. Finally, they passed the draft and forwarded it to the AG.

Part of the debate that followed was characteristic of politicians. A group launched the 'NO' campaign saying the law should be amended on clauses related to "right to life". They argued that abortion was allowed by the draft constitution. Yet, article 26 is clear. It says:

- (1) every person has a right to life;
- (2) the life of a person begins at conception;

- (3) A person shall not be deprived of life intentionally except to the extent authorised by this constitution or other written law;
- (4) Abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment or the life or health of the mother is in danger or if permitted by any other written law.

Religious leaders vehemently opposed clause (4) above. The church became like the scene in ancient Babylon with the confusion of tongues (*confusio linguarum*) – the supposed initial fragmentation of human languages as a result of the construction of the ‘Tower of Babel’ described in the Bible’s *Book of Genesis* (11:1–9). The Church was a divided house with those Christians supporting the constitution revolving around Reverend John Njenga and other members for the Christian ‘YES’ campaign, while the face of the ‘NO’ campaign was Reverend Peter Karanja, the National Council of Churches of Kenya (NCCCK) Secretary General, who declared they would not vote for the new constitution unless the provisions on abortion and Kadhi’s courts were deleted. The Catholic Church was also at the fore front fighting against the new constitution. In a letter signed by all the Bishops, they declared that abortion was not good for our country. “It has been introduced to this process against the majority wish thereby making the proposed law undemocratic,” said them. They added that they were also opposed to Kadhi’s courts but “we have no problem with our Muslim brothers and sisters exercising their religious freedom; only that it would be done in equity bringing this through an act of parliament” (*Daily Nation*, July 30th 2010).

There were many arguments against the proposed constitution from church leaders who advised Kenyans to say no to the constitution because the cases of abortion would rise. That people would face eternal punishment for sins of adultery, abortion etc. Some Catholic church leaders told their faithfuls to vote No because abortion is worse than murder and the blood of unborn children will haunt them.

These statements reminded me of the poem ‘don’t knock at my door’ by Georgia Douglas Johnson:

Black Woman
 Don’t knock at my door, little child
 I cannot let you in,
 You know not what a world this is
 Of cruelty and sin

Wait in the still eternity
 Until I come to you,
 The world is cruel, cruel, cruel, child
 I cannot let you in.

Don't knock at my door, little one
I cannot bear the pain
Of turning deaf ear to your call
Time and time again. (*Margaret Busby, 1992:186*).

Women wondered if men in religious leadership were saying that pregnant women should be allowed to die. Whether stating “every person has a right to life” should have added “except for pregnant women who may be in danger.” Women hardly talked about it because for them, the issue was not academic. No woman loves to have an abortion. It is not pleasurable, it is dangerous and painful. This pre-occupation with the woman’s body was baffling. The churches behaved as if all that women wanted was the law to allow them abort so that they could rush to hospitals to do it. It was amazing how this debate on abortion by men of the cloth demonstrated their desire and obsession with the woman’s body. Since religious leaders insisted on the provision that “life begins at conception,” the foetus, at any stage, became more important than the woman. It was as if it grows in the uterus independently of the woman that feeds and nurtures it. It was as if we were re-writing the Biblical Ten Commandments in the constitution. The Church leaders’ opposition to Kadhi’s courts also demonstrated their lack of tolerance to other faiths.

Politicians’ take on the referendum

As for the politicians on the ‘No’ side that opposed the draft, it had become a tradition to look for squirrels at every stage, look for ways of ensuring that Kenyan people did not have a new constitution. The politicians changed sides on a daily basis. The ‘NO’ group’s claim that they needed more time to build consensus was an insult to Kenyans who had waited for it for so long. Politicians had demonstrated that they did not know the meaning of the word ‘consensus’ unless it was an issue specifically beneficial to them. The only thing that was consistent with politicians in this process was their inconsistency in all matters constitutional. Some even supported the draft during the day and fought it under cover of darkness. They were baptised, *water melons* by the media in line with the attributes of the fruit that is green on the outside and red in the inside. Water melons reflected the colours used as symbols in the referendum exercise, which were green for ‘Yes’ and red for ‘No’.

When at last the referendum day came, no one could stop the drum beats of history. Many Christians voted with their conscience—they were ahead of their leaders. They could not, like many Kenyans of other faiths, fail to conclude the journey which was full of sacrifice, pain, death, stalemates and suspense. They had reached the finest hour. It was a milestone in our history. With 8.7 million votes cast, six million supported the new constitution. It was the President who said:

“The new constitution is about the future.....I am convinced it will take this country to that future that Kenyan people envision. A future of great economic growth.” (*Sunday Nation*, July 25th 2010)

Hon. Raila Odinga, the Prime Minister, said:

“To day, we close a long chapter in our history. We put repression, exclusion and the long struggle behind us once and for all. We have opened up a clean page in our book. On that page, we begin writing a story of an equal and just society...a time comes in the life of every nation when citizens have to choose between the status quo and the future that is full of promise.” (*Saturday Nation* August 28th 2010)

2011: Remaining vigilant even as we celebrate the first season of harvest

In its fifth schedule, the new constitution outlines the legislations to be enacted by parliament within specified periods. Among them are legislations related to representations of the people which include:

- Legislation on Elections (Article 82);
- Independent Electoral and Boundaries Commission (Article 88);
- Legislation on Political Parties (Article 92).

These pieces of legislations were given a time frame of one year. The deadline was August 26, 2011.

It should be noted that article 81 (b) states that: “Not more than two thirds of the members of elective and public bodies shall be of the same gender.” In preparing the legislation to operationalise article 82 on elections, the question of how to implement article 81 (b) above was raised by the Interim Independent Electoral Commission. This, together with article 27 of the Bill of Rights which also says that not more than two-thirds of elective and appointive positions should be of either gender, generated a lot of debate. The provision saw court battles that women fought because the implementation process was not observing this particular rule. A case in point was the appointment of the Supreme Court judges whose nominations were temporarily stopped by the High Court because FIDA (Kenya Chapter) and five other women’s organisations – CREAM, The League of Kenya Women Voters, Women in Law and Development in Africa (WILDAF), Caucus for Women Leadership and Coalition on Violence Against Women (COVAW) – took the Judicial Service Commission to court for refusing to honour the constitutional provision (High Court of Kenya Case No. 102 of 2011). The JSC had nominated 2 out of seven female judges thereby going against the constitutional provision.

The first nominations of Chief Justice, Attorney general, Director of Public Prosecution and Controller of Budget by President Mwai Kibaki had to be withdrawn because they were deemed not to have complied with the spirit and letter of the new constitution that required competitive sourcing through

advertising. The President bowed to pressure and withdrew the nominations. Later, the president, in consultation with the Prime Minister, appointed a female Controller of Budget, Mrs. Agnes Nagila Odhiambo, and a male Auditor General, Mr. Edward Ouko. Githu Muigai, a male lawyer, was appointed AG. It is also worth noting that the Judicial Service Commission had earlier on appointed a male Chief Justice, Dr. Willy Mutunga and a female Deputy Chief Justice, Ms. Nancy Baraza. Soon after, the Judicial Service Commission also recommended 14 out of 28 female judges for appointment. This was indeed *Time for Harvest*.

The alertness of women in monitoring the implementation was bearing fruit. In this spirit of openness, the vetting of police was stopped because it was found not to be transparent for it did not allow public participation. Kenyans expected the vetting of police to follow the path set out by the Judicial Service Commission and other bodies where vacancies were advertised. Interviews and vetting was undertaken and the public was allowed to give views on the nominees for Chief Justice (CJ), Deputy Chief Justice (DCJ), Director of Public Prosecution (DPP), Judges, and Members of the Constitutional Commissions, among other officers.

The battle for implementation of the two-third rule

It should be noted that when the parliamentary committee on the constitution met in Naivasha in early 2010 to finalise the draft in preparation for the referendum, they expanded parliament by adding another 80 seats to the original 210 seats thereby making a total of 290 seats. In addition, and in order to accommodate their interests of increasing the constituencies, they removed a provision from article 97 which had provided for the law to ensure not more than two thirds of members of parliament were of the same gender. This provision was the equivalent of article 177, (1), (b) and article 177 (2) of the new constitution which provides for the membership of county assemblies in relation to the special seats.

The provision the committee removed was in the Bomas draft, the Wako draft and indeed the Committee of Experts 2009 draft. Women were aware of this action and tried to demonstrate in Naivasha to get the team to retain the provision. This did not happen and the ghost of their action was to later come back to haunt those responsible for overseeing the implementation process.

Women were concerned with lack of mechanisms for the implementation of the two-third rule in constituting the National Assembly and the Senate as presented in Article 97 and 98. They argued that implementation of the “not more than two-third gender representation principle, (Articles 27 (8) and 81(b))” had to be done. This matter was considered urgent because the nation was heading to the 2012 general election whose results, if not in compliance with the constitution, would lead the country to a constitutional crisis. Women

once again came together and proposed a mechanism for implementation of these articles. As had become the tradition with women's organisations, the Women's Political Alliance called a meeting of women's organisations and invited the Interim Independent Election Commission (IIEC) Chair, Mr. Issack Hassan, to find ways of addressing the issue.¹⁴

Women's organisations formed the *National Women Committee on the Implementation of the Constitution*, representing among other organisations: the Caucus for Women Leadership, Women's Political Alliance, The League of Kenyan Women Voters, Maendeleo ya Wanawake, Coalition on Violence Against Women, Centre for Rights Education and Awareness, Social Foundation Resource Centre, The League of Muslim Women, and Africa Women & Child Features. Women also identified a technical committee whose membership included: Daisy Amdany, Maimuna Mwidau, Wambui Kanyi, Kamla Sikand, Juliet Makokha, Debora Okumu, Rosemary Okelo, Jill Ghai, Linda Musumba, Cyprian Nyamwamu, Mary Njeru, Susan Gachukia, Jacqui Kibugi, Ayoo Odicoh, Beatrice Kamau, Rukia Subo, Alice Kirambi, Sarah Muhoya, Alice Njau, Maria Nzomo, Regina Mwatha, Salome Muigai and Tedd Olang, among other members.

The committee looked for different formulae, carried out research, sought the interpretation of the meaning of the two-thirds representation in terms of arithmetic, and came up with the formula for the implementation of this provision. On its part, the Interim Independent Commission had also identified this problem and had called upon women to work with them to avoid a possible constitutional crisis. The women and the IIEC were convinced that this was a national agenda and should not be seen as addressing the issues of women only.

Women proposed a number of mechanisms that could be used in order to ensure that the new constitution was obeyed. One of the proposals that women came up with – with great support from the Chair of the Interim Independent Commission, Mr. Issack Hassan and Ms Gill Ghai, a consultant, was rotating constituencies. This meant that the constituencies would be clustered into four and through lotting, one constituency would have to field only women candidates. That would ensure that at least a quarter of the constituencies would go to women. The following election would see the three remaining constituencies do the lottery and again pick one from “women only candidates.” After four elections, this process would be reviewed. Women argued that, rotating was a type of quota system that proposed that some constituencies be earmarked for the disadvantaged gender. This argument was based on Article 27 (6) that prompts the state to take legislative and other measures, including Affirmative Action programmes and policies designed to

¹⁴ Mr. Issack Hassan would later (2012) be appointed to head the Independent Election and Boundarie Commission (IEBC).

redress any disadvantage suffered by individuals or groups because of past discrimination. In addition, women argued that Article 81(b) of the constitution was a principle that the electoral system was required to comply with. The provision that: “not more than two-thirds of members of elective public bodies shall be of the same gender,” had to be addressed.

Women also argued that, Article 24 “permits reasonable limitations on rights when the purpose of the limitation is reasonable and justified in a democratic society.” In addition, the limitation of rights was designed to be as little as possible in that a constituency would be subjected to the limitation only for a single term of 5 years.

Women did a lot of comparative studies on the quota system, just as they had done when they were negotiating for the provisions throughout the review process. And as has been the tradition of women representatives all along, the National Women Committee on Implementation of the Constitution shared the committee proposals with women from all the 47 counties at a two-day conference at Mbagathi, Nairobi. The conference debated the proposals, validated them and mandated the National Women Committee on Implementation of the Constitution to ensure that the proposals were adopted by the electoral law. The Committee called upon the Women’s Negotiating Team to return to the battle field and help negotiate with the political leadership and others involved in the implementation of the constitution to ensure that implementation of “not more than two-thirds” rule was obeyed.

Response to women’s quota system proposal

Response to women’s proposals was fast and furious with many articles in the papers and the social media claiming that with their demands and Court Cases, women were hindering implementation of the constitution. The traditional arguments about women wanting to be given free seats, their refusal to compete with men, their supposed interference with democratic processes, their majority number, among other arguments, came to the fore once again. The Standard newspaper editorial team noted that:

“Male MPs ganged up to defeat a proposed amendment to the elections bills that would have compelled political parties to ensure women obtained one third of nominations for pools. This was wrong. Parliament erred by rejecting the amendment. The rejection saw parliament squander an opportunity to resolve the constitution impasse on the not more than two thirds gender ration requirement in the constitution. It was selfish of MPs.....” (*Sunday Standard*, August 28th 2011:12).

Other opinion shapers came to the defence of women and the constitution. Mr Maina Kiai, in an article in the *Saturday Nation*, July 23rd 2011, argued:

“The past weeks have seen frantic opinions in print and blogs criticising the provisions in the constitution regarding equity and especially the provision

that ‘not more than two thirds of the members of elective or appointive bodies shall be of the same gender.’ To their credit, Kenyan women have sued over this clause, arguing that five out of seven Supreme Court Judges is indeed more than two thirds; in simple maths, it comes to 71 per cent.”

Kiai was right. We had even consulted the Director of the School of Mathematics, University of Nairobi, to make sure that the arithmetic of Jacqui Kibugi of the National Women’s team was correct. Indeed, the director confirmed that women were right but the three bench judge decided otherwise and advised women to direct “their feminist missiles elsewhere.”¹⁵

On the issue of representation in parliament, women stuck to their guns. The Interim Independent and Boundaries Commission adopted the formula to implement the not more than two-thirds rule. The Committee on the Implementation of the Constitution (CIC) forwarded the Electoral Bill to the Ministry for Justice but with reservations on the formula but the Chair of CIC Mr. Simeon Nyachae insisted that a way that was in line with the constitution needed to be found. The cabinet at its meeting debated the law and suggested that there was need to implement the two-thirds rule and that this might require a constitutional amendment. The debate came back to women. Once again, they went back to the drawing board. They wanted the debate on the formulae to be addressed in parliament. They made the following proposals:

The Elections Bill, 2011—notice of proposed committee stage amendments

Notice is given that I intend to move the following amendment to the Elections Bill, 2011 at the Committee Stage-

New clause 34a-

THAT the following new clause be inserted after clause 34-

Gender principle.	34A. The Independent Electoral and Boundaries Commission shall so manage elections, having regard to Article 90 of the Constitution among other provisions of law, as to ensure that the principle provided for in Article 27(8) and Article 81(b) of the Constitution is achieved at all times in respect of the National Assembly, the Senate and the County Assemblies.
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In order to comply with the above, and in the spirit of the Constitution, the additional 80 seats as provided in Article 97(1)(a), be utilised to ensure compliance with the not more than two-thirds Constitutional principle and taking into consideration the requirements set out in Article 89 (5) & (6).

¹⁵ See judgement of High Court of Kenya Case No. 102 of 2011.

New clause 34b

THAT the following new clause be inserted after clause 34-

Taking into account Article 81(b) defining the Constitutional principles for the electoral system, and Article 91(g) of the Constitution requiring Political Parties to promote the objects and principles of this Constitution and the rule of law, the Independent Electoral Boundaries Commission scrutinises the lists of candidates for elective offices nominated by all Political Parties participating in the elections of the National Assembly, Senate and County Assembly to comply with the Principle that not more than two-thirds of the nominated candidates are of the same gender. The scrutiny should take into account the diversity of Kenyans. Where the list submitted by any Political Party fails to comply with this requirement, the Independent Electoral Boundaries Commission shall reject the entire Party List.

Issued on this 22nd day of August 2011 by the National Women's Committee on the Implementation of the Constitution.

Women did not want to be the first to ask for the amendment of the new constitution. They, like all Kenyans, had bad experiences with the amendment of the old constitution, most of which was done with impunity and in particular, to centralise power around the president. That is the reason they went out of their way to look for all types of formulae. They, however, were aware that the cure would be to return the 30 per cent provision that the Parliamentary Committee on the Constitution had removed during the Naivasha session in 2010. So they soldiered on because they had no intention of losing the central provision that had become their rallying point and which was a key achievement.

The proposed amendments to the Electoral Bill provisions were given to Hon. Rachel Shebesh and Hon. Sofia Abdi to share with other parliamentarians and lobby for it to be adopted in parliament. Hon. Charity Ngilu had also said she would look for someone to table the amendments to the Electoral Bill. Parliament, on the 26th day of August 2011, a day before the anniversary of the promulgation of the new constitution, rejected the amendments. Women from the 47 counties who were meeting at Ufungamano House, the house that for years was the home of debates on the review of the constitution and where the People's Commission was anointed in 2000, decided to walk to parliament in protest. They prepared a petition and walked from Uhuru Park's Freedom

Corner – the temporary home of mothers of political prisoners during the Moi era – to parliament, the House where they had witnessed many betrayals.

Women blocked parliament road for hours, singing and praying. Women members of parliament, Hon. Martha Karua, Hon. Shebesh, Hon. Margaret Wanjiru, Hon. JoyceLaboso and Hon. Sofia Abdi came to the gate and received the petition from the demonstrating women. The petition was submitted, on behalf of the women, by Deborah Okumu and myself. It was the second time that women were sending a petition to parliament, the first time being 2006 when they had collected petitions from every constituency to ask parliamentarians to support the constitutional amendment which would have allowed for an extra fifty seats for women as well as new constituencies. That bill died a natural death at the hands of parliamentarians.¹⁶

Since the cabinet had said it would come up with a proposal to amend the constitution, women decided that they might as well go ahead and propose the amendment and submit it to the then cabinet sub-committee much as they wanted to avoid a constitutional amendment. Women, among them Hon. Julia Ojiambo, Dr. Regina Mwatha, Chair of the Gender and Equality Commission, Ms Daisy Amdany, Mrs Wambui Kanyi, among others, held consultations with Hon. Dalmas Otieno who was chairing the cabinet sub-committee. They agreed to send the women's proposal on how to address the amendment to the sub-committee for further action.¹⁷

This proposed amendment was a last resort. Women leaders had called their soldiers from the 47 counties back to the battle field on the 26th day of August both to celebrate the anniversary of the constitution and to also share with them the hurdles of the implementation process. They needed to brief them on the process, the fruits of the harvest and the problems they were facing. They also needed to celebrate other success stories like the fact that women had won the battle of getting a stand-alone *Gender and Equality Commission* which had previously been put within Human Rights. Women, led by the Ministry for Gender and the Gender Commission Chair, Dr. Regina Mwatha, used article 59 sub-article 4 of the Bill of Rights to fight for an Independent Gender and Equality Commission. The provision says:

“Parliament shall enact legislation to give full effect to this part, and any such legislation may reconstruct the commission into two or more separate commissions.”

Through lobbying with members of parliament and the cabinet, the Gender Commission, which was also in the Bomas draft and Wako draft but had been removed from the draft by the Committee of Experts, came back home.

¹⁶ See petition in appendix VIII

¹⁷ See the proposed amendment, appendix VII

Despite some implementation hiccups, reflecting on this process at the various stages stirs in me the spirit of joy. The joy of knowing that women have, close to twenty years, moved in solidarity with each other walking rhythmically—they have walked towards their destination. Women of all walks of life, of all ethnic groups, those who had gone to school, those who had gained knowledge through experience, religious women, politicians, entrepreneurs, all women, myriads of them – walked together towards the same goal; and they walked in step towards the same destination. It is the same solidarity and love that brought Kenya women together again to safeguard the gains and to negotiate better governance structures during the debate on the Harmonised Draft; and it is the same spirit that took them to Mbagathi in July 2011 and to Ufungamano in August 2011 to look for strategies for the implementation of the two-thirds gender rule. It is indeed, *Time for Harvest*, but it is also time to ensure that we continue to monitor the implementation process. Indeed vigilance is the price of liberty.

*Highlights of gains for Kenyan women in the new constitution of Kenya*¹⁸

The New Kenyan Constitution 2010: • Citizenship by birth (i) a person is a citizen by birth if on the day of a person's birth, whether or not the person is born in Kenya, either the mother or father is a citizen.	Article 1
• entrenches, under the National Goals and Principles of Governance: human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised.	Article 10 (2), b
• ensures that women and men will have the right to equal treatment and opportunities in political, economic, cultural and social spheres without discrimination.	Article 14 (1)
• the state shall not discriminate directly or indirectly any person on any grounds including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.	Article 27 (4)
• the State shall take legislative and other measures, Affirmative Action, programmes and policies, designed to redress any disadvantage suffered by individuals or groups of past discrimination	Article 27 (6)

¹⁸ Adopted from FIDA Kenya, <http://fidakenya.org>

• accords the right to health including reproductive health to all.	Article 43 (1) (a)
• provides that parties to a marriage will be entitled to equal rights at the time of marriage, during the marriage and at its dissolution.	Article 45 (3)
• ensures children have parental care and protection which includes equal responsibility for the mother or father to provide for the child whether they are married or not.	Article 53 (1)(e)
• elimination of gender discrimination in law, customs and practices related to Land and Property.	Article 60 (1) (f).
• provides for the enactment of legislation for the protection of matrimonial property with special interest on the matrimonial home during, and upon the termination of the marriage.	Article 68 (c) (iii).
• maintains a one-third requirement for either gender in elective bodies giving women of Kenya at least one-third minimum in elective public bodies.	Article 81 (b).
• ensures that gender equality is maintained in political parties providing for gender equality and equity.	Article 91 (f)
• ensures that 47 women elected by the registered voters in each county are provided for.	Article 97 (b)
• provides that twelve members will be nominated by parliamentary political parties according to the proportion of members of the national assembly to represent special interests including the youth, persons with disabilities, and workers using party lists.	Article 97 (c)
• ensures that sixteen women members shall be nominated by political parties according to their proportion of members of senate elected under clause A and through party lists.	Article 98 (1) (b)
• provides that Parliament shall formulate law to promote the representation of women, persons with disabilities, ethnic and other minorities and marginalised communities in Parliament.	Article 100.
• ensures the number of members necessary for special seats so that not more than two thirds of the national assembly are of the same gender.	Article 177 (1) (b)

• provides that not more than two thirds of the members of any county assembly or county executive committee shall be of the same gender.	Article 197 (1)
• affords adequate and equal opportunities for appointment, training and advancement for women and men at all levels within the Public Service Commission.	Article 232 (1) (i).

There are many other gains in the New Constitution. It is truly a constitution where women have reclaimed their place. It is indeed a season of harvest.

Pictorial III

1. Women's negotiations at national constitution conferences at Bomas and thereafter



Martha Koome, the Chair of the Bill of Rights Committee, at Bomas.



Margaret Nyathogora, a member of the Devolution Committee and Nyeri District delegate.



Julia Ojiambo, making her comments on creation of Devolved Government.



Commissioner Githu Muigai (later Attorney General of Kenya from September 2011) and the late Prof. Wangari Maathai at the Bomas Conference.



Adhu Awiti, the Chair of Devolution Committee, at Bomas with the Author and Commissioner Mutakha Kangu, 2003-2004.



Catherine Nyamato, Wahu Kaara and Caroline Lintari at a women's consultations meeting at Bomas.



Former A.G. Amos Wako and the Author in consultations at Bomas.



Prof. Yash Pal Ghai, the Chair of CKRC and of the National Constitutional Conference with Bishop Sulumeti and the author.



Hon. Phoebe Asiyo, Wahu Kaara and another delegate consult at Bomas Constitutional Conference, 2003.



The Author, with Margaret Nyathogora and another district delegate, 2003.



Hon. Grace Ogot, Hon. Julia Ojiambo and the Author consulting at Bomas.



Women delegates at Bomas Conference, 2003.



Young women; among them: Catherine Mbai, Nkatha Kabira and Candy at Bomas negotiations, 2003.



Delegates being sworn-in at the beginning of the conference, 2003.



Prof. Ghai, listening to the voices of young women. Among them are Ayoo Odiko (in red), Nkatha Kabira and Wanjiku Ndegwa (extreme left).



Women consulting at the National Constitution Conference at Bomas. Among them is Orie Rogo Manduli (2nd right).



Prof. Yash Pal Ghai consults with Rev. Mutava Musyimi at the Bomas Conference, 2003. Behind them are Commissioners Salome Mungai and Alice Yano.



Delegates at the Bomas National Constitutional Conference.



Women holding a press conference at Bomas. Among them are Orie Rogo Manduli and Grace Ogot.

2. Bomas draft and 2005 referendum



Daisy Amdany, presenting women's views on the referendum draft.



Kamla Sikand, addressing a press conference on behalf of WPAK on women's agenda in the referendum draft.



Martha Rop from Kitale, a District delegate at the National Constitutional Conference at Bomas.



Lucy Githaiga, addressing the women on their provisions in the referendum draft.



Samuel Kivuitu addressing women on the referendum draft 2005 at Serena Hotel.



Simeon Nyachae, Chair of the Parliamentary Committee on the Constitution; he protected Affirmative Action provisions in the Kilifi Draft, 2005.



Kamla Sikand and Abida Aroni, the Chair of CKRC, celebrate after the provision on Affirmative Action were retained in the referendum draft.



Shanyisa Khasiani and Salome Muigai, discussing referendum strategies, 2005.



Women leaders: Juliet Makokha, Happy Gloria and Chebet ponder on the way forward after the 2005 referendum.



Women leaders: Daisy Amdany, Wairimu Mungai and Wambui Thiongo, ponder on the way forward after the 2005 referendum.



Members of the Women's Consensus Group: Lucy Githaiga, Daisy Amdany, Kamla Sikand, Wambui Kanyi, Wanjiku Mbugua and Chebet, celebrates the retention of Affirmative Action provisions in the Wako Draft, 2005.



Members of the Women's Consensus group, 2005.

3. The final stretch



Atsango Chesoni, the Vice Chair of the CoE who prepared the Harmonised Draft, 2010.



Njoki Ndung'u, a member of the CoE that prepared the Harmonised Draft, 2010.



Maimuna Mwidau, the leader of the League of Muslim Women and Director, WPAK, took lead in the National Women Conference at Bomas in 2010.



Mutula Kilonzo, Minister for Constitution Affairs, addresses the pre-referendum National Women Conference, April 2010 of Bomas.



Naomi Okul, Executive Director, Maendeleo ya Wanawake, at a pre-referendum women meeting, April 2010.



Debora Okumu, the Executive Director of the Caucus for Women Leadership, organised for women presentations to the parliamentary committee in Naivasha.



Emmy Kosgei leads a group of singers in celebrating the new constitution at Uhuru Park on 27th August 2010.

4. The hurdles of constitution implementation



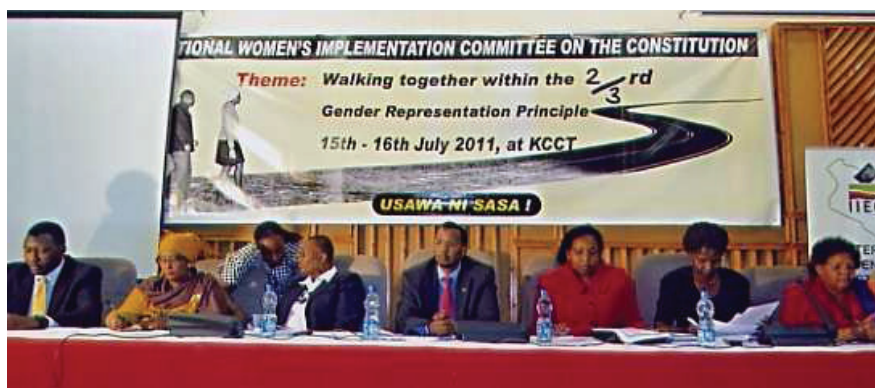
Ms Maimuna Mwidau, the Chair of the League of Muslim Women (Left) leads members of her organisation to the women's conference to address implementation of the 2/3 rule in Mbagathi.



Caroline Ng'ang'a, who was the Chair of the Committee on Representation of the people at Bomas, walks to the Conference Hall at Mbagathi, 2011.



Women walk to Mbagathi to address the issue of the two-thirds representation, 2011.



The Interim Independent Commission Chair, Ahmed Issack Hassan, addresses women at Mbagathi at a Conference on Implementation of two-thirds rule for representation in Parliament.



Regina Karega, Chair of the Gender Commission (left), Prof. Jackline Oduor, a Commissioner from IIEC, and the Author addressing women at the National Women's Implementation Committee on the constitution at Mbagathi.

5. Petition for the two-third gender representation



Author, addressing women before their march to parliament on August 26th 2011 to present petition for two-thirds gender representation.



Prof. Maria Nzomo, addressing women on August 26th 2011.



Kenya women singing and dancing at the Uhuru Park's Freedom Corner, Nairobi before marching to parliament to present petition on the two-thirds gender representation.



Kenya women marching to parliament to present petition on the two-thirds rd gender representation.



Sarah Muboya, the Author, and Maimuna Mwidau negotiating with a policewoman near parliament building on August 26th 2011.



Presentation of the petition to parliament: Author handing over petition document to women parliamentarians.



Women, Ethnicity and Constitution Making

This section reflects on various aspects that were crucial and will continue to be important as women's struggle for their space in societies continue. Among these issues are the various identities, ethnic identity among them, choices women make in their struggle and how these may move the struggle forward or slow it. The section also gives us a chance to reflect on how, when we emerge from the shadows, this process itself must be celebrated. Having walked a long journey towards a new constitutional dispensation, a time for reflection as we harvest is in order.

Ethnicity

Ethnic identity and how it played itself out had its impact in the women's struggle. It is therefore important to reflect on it. What is ethnicity? Ethnicity refers to social groups with a shared history, a sense of identity, geography and cultural roots. Benjamin Neubeger (1998) states that ethnicity is a form of a historically grounded relationship while Barth Fredrick (1998) sees ethnicity as a set of delineated boundaries between neighbouring groups and individuals who are primarily concerned with maintaining these boundaries in order to explain one's identity. Other scholars have defined it as a fluid concept in which members distinguish "in groups" from "out groups" and which can be in a state of constant change.

The "in groups" and "out groups" can thus be described as groups of human population whose members identify with each other, usually on the basis of an assumed common genealogy or ancestry, hence forming an ethnic group. Apart from the common ancestry, an ethnic group further distinguishes itself by having same culture, mutual interests, name, language, common interests, goals, visions, social myths, religion and historical experiences. The group has a sense of identity, belonging, solidarity. The definitions do not take into consideration women's experiences with multi-ethnic identities. You may be born in one ethnic group and be married into another. Your children belong to your home of marriage but you are a stranger. At your home of birth, you are considered to belong to your husband's people and in the process, you experience a sense of alienation. This however is a discussion for another day.

In a context like ours, here in Kenya where we are a young nation still struggling to unite, and where it is not clear whether we want to be like a plate of salad or of *irio*, the conflict of ethnic identity and the women's identity as a group cannot be ignored.

Often, these distinct groups can account for their origin and character and can differentiate themselves from other groups. The group has collective memory, collective history, and collective identity. A Gĩkũyũ, Luo, Luhya, Giriama, Maasai, Rendile, Somali or Kalenjin woman can easily see herself as such. Though often, if married to a man from another community, one experiences a sense of alienation when your children acquire a different identity from yours. It is an undisputed identity. Kĩrĩro wa Ngũgi notes:

“We do not seem to have quite made up our minds as whether we are one people or are a diverse people...the tribe is the instrument of political and social expression and will remain so for quite a while, maybe even to the end of time....This, therefore, becomes the starting point for peaceful co-existence and must in particular find open recognition in the open state.”
(*Daily Nation*, April 28th 2008)

It is not an understatement to say that we need an ethnic union like the European Union. Different communities living in Kenya have a language, a geographical place of origin, a culture, a history, a collective memory. This, therefore, becomes the woman's first identity. Identity weaves an individual aspect with that of the society. Individual women seek to understand the relationship between their first identity and the second identity. For example, how one relates with a family, community or an ethnic group explains that person's identity within that group.

Ethnic identity in Kenya and elsewhere, especially in Africa today, comes into focus when competition for autonomy among ethnic groups begins. This is common when different groups are reminded of inequality in the distribution of national resources by political leaders as was the case at the National Constitutional Conference at Bomas (2003–2004) and also during the Referendum in 2005. It also emerged during the collection of views from Kenyans when ethnicity reared its ugly face after the 2007 elections.

In Part II of this book, which is a presentation and analysis of voices from women and men, we notice the sense of marginalisation, social and ethnic exclusion. In North Eastern Province, for instance, there was the general feeling of neglect by the government. In Halugo, for instance, many felt that their communities were used as shields to protect the Kenyan borders. There was hardly any security. Foreigners could just cross the border and attack. The question of the screen cards, refusal to deal with the historical injustices and a great feeling of marginalisation was evident. Similar sentiments were felt all over the country, feelings of being economically marginalised and socially excluded. It was also the same feeling within regions, with communities such

as the Teso feeling marginalised by the larger Luhya community; Sengwers being marginalised by the larger Kalenjin community, Coastal people feeling marginalised by the government. Many other ethnic minorities testified to this.

While collecting views in Sio Port in Funyula Constituency, Busia District, Commissioner Alice Yano and I listened to sentiments expressed to the effect that it was absolutely unfair for Kikuyus and Kalenjins to imagine they were the only ones who could give birth to sons who were presidential material. This was happening in 2002 when president Moi had identified Uhuru Kenyatta, the son of the first Kenyan president, Mzee Jomo Kenyatta, to be his candidate of choice to succeed him as president. The people at Sio Port recommended that the presidential seat be rotational.

With this sense of marginalisation, ethnic tension was bound to emerge and as long as this continues, the then “us vis a vis others” attitude will continue to be manifested. Economic marginalisation, social and political exclusion inculcates in the people feelings of inferiority complex, generates anger and resentment and harbours grudges between different ethnic groups. The cultural differences that first separated communities are no longer central – they are overtaken by struggles for power and resources. This has been very evident in our close to fifty years of efforts towards nation building. This anger and resentment characterised the debate on devolution (region governments) at the National Constitutional Conference at Bomas. I have discussed this in an earlier chapter but for emphasis, one can add that the disagreements that I have referred to also meant that ethnic groups such as the Kalenjins – and among them, the Nandis for instance, did not want to let go of Mt. Elgon or Trans Nzoia districts. On the other hand, the Pokots did not want Trans Nzoia to go unless they could hold on to Kitale, their gateway in trade. But the Luhyas did not want to lose Mt. Elgon either. The Mbeere, though a small ethnic group, would prefer to stay alone. Embu and Kirinyaga districts, which felt marginalised by the larger Central Province, did not want to be part of Central. Maasais were happy to be alone and control their region, their resources and promote the economy in their own way.

There were those who would have wanted to give powers of taxation to regions believing that their regions could be self-sustaining. Then there were those who felt that their regions could not sustain themselves. Their view was that the central government should collect taxes and then distribute development countrywide. The discussions revolved around “power to control or power to refuse to be controlled” by a larger community. They also revolved around access and control of resources and exclusion from decision making, among other issues. This is in agreement with Miltin Esman (2001) who notes that ethnic thinking in political life is a product of modern conflict over power and resources. And Martin Kimani, writing after the 2007 general elections in Kenya observes: “politics is ethnicity and ethnicity is politics, power is

political; and must be won and kept by a tribal brotherhood” (*Daily Nation*, March 31st, 2008). But we must never forget that women are part of these ethnic identities; identities that define them, their history, a collective memory, their families, their children, their geographical area.

Ethnicity and the 2005 referendum

The 2005 pre-referendum campaigns conducted by political leaders demonstrated the power of ethnic ideology. The period saw a resurgence of ethnic competition that was further extended to voting for the new draft constitution. The same fear and hatred generated during the referendum led to ethnic animosity that was later manifested in the 2007 general elections and the deaths of more than 1,300 people and displacement of hundreds of thousands. Jerry Okungu, highlighting his opinion about the constitutional referendum noted that the referendum was about ethnic chauvinism and not the constitution (*Daily Nation Newspaper*, October 27th 2005). According to him, the referendum was also about political power struggle. It was about who would control state power, who to marginalise from state power and the national resources. It was about revenge too for promises not fulfilled; about violated contracts. This follows from remarks made by some politicians before November 21st 2005—the day of the referendum vote. Some political leaders from Central Province cautioned their constituents against rejecting the draft constitution. One particularly said that if they voted against the referendum, they would have voted “their” president out of power, the power they had sought and suffered for, for many years. Others threatened to remove some communities from the Rift Valley if they voted against the will of the larger communities in the Rift Valley Province. These remarks by political leaders demonstrate that political leaders use their ethnic identities to get to state power.

It has also been observed that the rest of the Kenyan ethnic communities aligned themselves against the Agĩkũyũ and not against the proposed constitution. The majority of the leaders in the Orange Team (which opposed the draft) focused their opposition on the clause of executive authority. The team leaders opposed the excessive powers bestowed on the president by the constitution, in particular, on the then President Mwai Kibaki, the incumbent. Hon. Charity Ngilu, although belonging to the Banana Team (for the “Yes vote”) in the 2005 referendum, was non-committal, a fact she admitted later. “I was only a spy in the Banana team. There is no way I would have supported the draft tailored to suit certain communities and guarantee them power forever” (*Kenya News Agency*, October 2nd 2007: *Africa-oped*). The statement has insinuations of ethnic struggles for power. The first lady, Lucy Kibaki, wife to the then President, Mwai Kibaki, supported the draft and warned Kenyans to be wary of those peddling lies about the proposed draft. For her,

those against the draft were against the government of President Mwai Kibaki, telling audiences that the draft would empower the NARC government to ensure development.

To protect the interests of certain ethnic communities, there were claims that ethnic militia were being prepared to unleash terror on opponents, on behalf of their leaders. The Orange Team was reported to have said that the 'Yes' camp was planning mayhem by using Mungiki after sensing defeat (*Daily Nation*, November 12th 2005). Similarly, those in Nyanza Province who claimed to support the referendum draft were threatened with eviction by ethnic militia and hired goons as it happened to Raphael Tuju, the then Minister for Information who supported the draft, when he took the campaign to Kisumu. Tuju's action indicated that there were a few political leaders who did not identify with their ethnic groups. But it is evident that we reinforce our identity using our ethnicity. Thus, our political leaders seek political power through their ethnic identities and hence, the prevalent desire for autonomy among ethnic communities.

Additionally, the power of ethnic identity during the campaign period saw sections of Kenyans reject the proposed clause empowering women. It was reported that Hon. Jebii Kilimo, then a minister in the Narc Government, ditched the "Yes camp" that was for the proposed draft after her meeting with Marakwet elders from her constituency. It was said that the community had issues with the provision for inheritance rights for women. Later on, Kilimo is quoted to have said, "I joined my colleagues, ODM, because of the land issue contained in the draft" (*Kenya Times*, October 9th 2005). Among other provisions, the clause proposed that women inherit land equally with men. The demand by women to have access and control of resources was one of the issues that women all over the country had agreed on as expounded in Part II of this book. In this case, Kilimo chose the primary identity, her ethnic identity, and fought against women interests like many other women during the 2005 referendum.

What then can we learn from all this? That, the socialisation of women as custodians of culture and representatives of essential values is ethnocentric. It also marginalises women as they become advocates of values that disempower them. The link between this social function and ethnicity explains what the primary identity is, ethnic, while womanhood is their second identity. Women have, for a long time, struggled to move away from being tools for promoting cultures that undermine their rights. That is the reason women returned to the shadows when the debate turned ethnic rather than agree to form a united front to fight for their rights as women. They, however, emerged from the shadows in 2006 to work for the fifty seats. In a letter to the editor of one of the Kenyan dailies, Hon. Wangari Maathai is cajoled for being neutral on the Wako Draft, unlike Kilimo. She was in the team just because she claimed "a section of the

document wants women to be equal to men” (*Daily Nation*, November 10th 2005). Kilimo said, “My people say it is bad and I have no choice but to say ‘No’” (*Daily Nation*, November 9th 2005). Kilimo’s claim to be speaking from her community shows the relationship between identity and ethnicity or rather an individual and community and the primary identity of women. The ethnic alignments shown during the 2005 Referendum campaign period can be termed as an over flow of the Bomas experience which took ethnic overtones where in many cases, support for one issue or another of the draft constitution was ethnically oriented. This was particularly so when it came to the debate on the Executive, Devolution and Transition Committees which remained contentious for a long time. Even as the discussion continued in 2009 with the Committee of Experts on Constitution Making, the debate and its rationale was based on the same fears and the need to control power and resources; also, the fear of other communities excluding another community because of state power or national resources.

Majority of the men who supported the Wako Draft dwelt on the issue of the executive authority, legislature, devolution and land. They did not comment on the empowerment of women as was provided for by both the Bomas and the referendum drafts. Those who opposed the draft nevertheless, constantly pointed out to the clauses aimed at uplifting women such as land inheritance, reproductive rights and marriage and found a way of negating these clauses. The reference and condemnation of the clauses on reproductive rights was not because our politicians were religious: far from it. They had to look for something that would make women think the draft was not good for them and, therefore, reject it. Many women, as noted earlier, unequivocally believed in land inheritance and as expounded in Part II of this book, many communities, including Agikũyũ, Ameru, Kipsigis, Nandis, Luhya and Kisiis supported the proposals for land inheritance by women during the presentation of views to the CKRC.

The rural folk, especially among the pastoral communities, voted against the referendum. This was particularly so in Nyanza, Western and Rift Valley Provinces which were opposition strongholds. One Maasai man interviewed by Citizen Radio said that the “equal rights clause” prompted the ‘No’ vote from him. He said, “No real man takes an order from a woman.”

The 2005 Referendum came and went but left behind it ethnicity and political balkanisation. Women’s organisations and Women’s Movement fell apart temporarily. But to quote Margaret Ogola once again, “The river of resistance never dries up, sometimes it meanders, around without any apparent direction, sometimes disappearing underground altogether but always there always moving toward the sea,” (1994:71) its destination, where there would be peace and plenty.

Women, ethnicity and the debate on devolution of powers

The issue of devolving power to the lower levels of governance has been one area which women have reflected on. We have argued, as is reflected in both Bomas and Wako drafts, that devolving power to the people would promote democratic and accountable exercise of sovereign power, foster national unity and regional diversity, give power back to the people, recognise the right of local communities to manage their local affairs, protect and promote the interests and rights of the minorities and marginalised groups at all levels, promote social and economic development and ensure access to services for all, among other positive things.

As they gave their views, women often said they wanted local leaders such as councillors, district officers, chiefs and village elders to be elected by the people; they wanted land issues, security and recruitment of police to be done by the local people. The issue of devolution of power to the people so that they could make choices and manage their own lives had been a major concern to women as they gave their views to the commission and at Bomas. After Bomas, they had continued to promote this concept.

At Bomas, however, ethnic tensions in relation to issues of the creation of regions, and determining where each district should be placed, became a power struggle that women were not prepared for. For them, devolving power to the people was not an ethnic issue. They participated fully and were very clear about the issues as long as they were discussing the functions of the district, taxation powers of the districts, the leadership of the district councils and district executive committees. When it came to the locational level, women again participated fully and ensured that at least 50 per cent of the locational committees were comprised of women. They felt there was reason to celebrate and this is why women continued to protect the counties in the Harmonised Draft. They ensured that 30 per cent women's representation and district elections of the governors remained intact.

Ethnicity and regions

The decision on the regions, their functions, their sizes, possible boundaries, among other elements, was a different ball game altogether. It was not only at Bomas, we had the same problem at the commission when we were discussing provincial (read regional) governments. Actually, when the commission was preparing the draft at Leisure Lodge in Mombasa, devolution was one area that kept on being postponed. The Commission eventually decided that the Attorney General, Amos Wako, was needed there to guide the discussion on the issue of units of devolution. Unfortunately, the devolution of power became an opportunity for regional ethnic negotiations for power and control. It is to be noted that the CKRC 2002 draft had provincial councils. The Bomas

draft had regions that would coordinate but have no taxation powers. The 2005 Referendum Draft, popularly known as “The Wako Draft,” removed the regions and put in the “National Forum for District Government.” The original spirit reflected in the principles governing devolution became subsidiary to power, control and ethnic issues. The Harmonised Draft that became the new constitution has no regional governments. It has counties as the principle level of devolution as had the others but no coordinating point for the counties.

Let us revisit Majimbo (Regionalism) and the Independence Constitution (1963). Apparently, Kenyatta and some of the negotiators of the Independence Constitution agreed to a Majimbo constitution with the aim of dismantling the same soon after, which they subsequently did in 1964. This left others feeling cheated and marginalised. In the same way, the debate at Bomas on regions had similar ethnic and power games that had not yet been addressed. The ethnic tensions, desire to control certain areas, fear of domination by bigger ethnic groups, among other issues, kept women away from addressing the devolution of power objectively.

It should also be remembered that the discussions on the regions became emotional. It was a clear sign of the level of real or perceived marginalisation of minority communities, particularly in the Rift Valley, where the regions’ inhabitants are less homogenous. The issue of Mt. Elgon was a case in point. North Rift inhabitants wanted to avoid what they saw as oppression from the Nandi community. The Maasai were comfortable with a Maa region, composed of Narok, Kajiado, and Trans-Mara where they are the majority. The Kikuyus and Kalenjins could not agree on where Nakuru should go. Each of the arguments revolved around protecting “our people”, “my community”.

Elsewhere in this book, I have given the case for the debate and voting on the issue of Nakuru/Kericho/Baringo area where the leaders of the two groups were Hon. Nicholas Biwott and Hon. G.G. Kariuki. When voting was done, the difference was one vote more for those who supported G.G. Kariuki's position. The next day, by the time the committee started its deliberations at nine o'clock, the room was full of committee non-members. Almost all the MPs from the Rift Valley were there to overturn the decision of the committee. Word went round that the MPs had met until the wee hours of the night to discuss this particular issue. They had agreed to come to the committee and reverse the decision. “Over their dead bodies would the larger Kericho district be separated from Nakuru district or Nakuru district be part of Central Region,” they swore. Finally, the contentious region was curved out as Region II in the Bomas draft in the first schedule (article 5(2)) which would consist of the following districts:

- Kericho
- Bureti
- Bomet
- Baringo
- Nakuru
- Samburu
- Laikipia

At this level of the debate, women were more or less observers. The debate had moved very fast. As a group, women had not consulted or even prepared themselves for this turn of events and since they were not normally considered as leaders of their communities, they had not been consulted either. So, they had not foreseen this dimension of the debate.

I cannot emphasise enough that ethnic tensions were part and parcel of the process of the review. One incident at the commission better illustrates this ethnic dimension of the Constitutional Review 2002. Bishop Njoroge, passionate about the Gĩkũyũ community, started defending me long before he became my acquaintance in the commission. Any time an issue came up and he thought I was being pushed to the corner because of my ethnic origin; he would come to my defence. One time, he boldly said in the plenary:

“From now on, any one who is hostile to Wanjiku because she is leading her committee well and making things move must deal with me first because I am also from Central Province and I will protect her.”¹⁹

Women, power and ethnicity

I have gone to details on this debate because I believe women have a different concept of power and use of power which needs to find its way into the mainstream definition.

At a meeting in May 2009 where I was asked by the Kenya Women Parliamentary Association (KEWOPA) to present women’s contentious issues, I thought it was important to tell them that, even as we dealt with women’s issues, we had to deal with issues that led to the defeat of the referendum document in 2005 and begin to bring women’s perspectives and world view to our national politics. I emphasised that:

“We have to look at grassroots women’s initiatives and the definition of power, leadership and the structures they have developed and let them influence our patriarchal concept of power. We cannot continue to follow the Machiavellian philosophy of power. Women must, without losing sight of their issues, also define what power is and use this to promote harmonious co-existence of our people, our many diverse communities.”²⁰

I continued to argue that we had to engage ourselves on issues such as those that had derailed our review process; for instance, creation of a ceremonial

¹⁹ Author’s notes

²⁰ Author’s notes

president without addressing the presidential election or creation of the district governments which were well thought out in Bomas and then the removal of the independence of the institutions, the separation of the powers at the district level, direct elections of district governors – even the name governor – which was done in order to reduce the power of the institutions closest to the people. I emphasised that women had to move the debate to the next level if they have to change national institutions, or ideology in order to build a better Kenya, Africa, and a world where men, women, children and communities will ‘grow and spread like the Manga tree in my uncle’s homestead,’ as said by the Luhya narrators in Muleka’s unpublished thesis on *Bukhayo Oral Poetry* (2008).

I am not saying what many “reformist” have told women, that is, “look at the bigger picture first and deal with the women’s issues later.” No, because this is a hoax. Women’s issues are part of the bigger picture so they cannot be postponed. But we have to look at women’s experiences, women’s worldviews, and create new knowledge, new frameworks for promoting democratic process in Africa because, as Andre Lorde (1984:126) says, “The master’s tools will never dismantle the master’s house.” We, therefore, must take the struggle further and women leaders, women academics and women lobbyists must identify critical tools of analysis and prepare the agenda for dismantling patriarchal institutions thereby bringing to visibility women’s experiences, women’s structures and philosophy so that we can transform our institutions, our world.

It is important for us to recognise that institutions and the ideologies guiding them and the philosophies on which they are based reflect the interplay between historical practices that also reflect masculine and feminine ideologies including religion, political and social cultural ideologies. We have to appreciate the ethnic variations that affect both men and women and analyse and appreciate these differences while at the same time looking for ways of ensuring that we develop more feminine, more community friendly structures and institutions.

Women, by taking their struggle to the second level where they engage in demanding new institutional frameworks, re-defining concepts such as democracy, politics and political power, by challenging the traditional understanding of devolution, executive authority, legislature and its composition, electoral processes, procedures for making decisions, management of institutions, and creating new institutions and processes, shall be transforming Kenya and our region.

Women have recognised that the value systems that exist have undermined the growth of our communities, of women, and even of men. They are systems that refuse to recognise that the more you share power, the more power you have. Instead, we have focused on *control* and what we can keep from others.

As we deal with women as the reference point, we need to look at the material reality and recognise the differences, whether ethnic, political or class amongst women. We need to recognise these diversities and appreciate them within the broad framework of transformative ideology, by recognizing, as Andrea Dworkin (1974) notes:

“As a Jew in Nazi Germany, I would be oppressed as a woman, but hunted, slaughtered as a Jew. As a Native American, I would be oppressed as a squaw, but hunted, slaughtered as a Native American. The first identity, the one that brings with it as part of its definition death, is the identity of primary agency. This is important recognition because it relieves us of a serious confusion. The fact that many black women experience primary emergency as Blacks in no way lessens the responsibility of Blacks to assimilate this and other analysis of sexism and apply it to their own revolutionary work” (pp.23-24).

We can easily draw parallels and say that during the post-election violence in 2008 in this country, Gikūyū women in the Rift Valley were oppressed as a whole; as women first but they were raped and killed as the Agikūyū. That is their primary identity. The women who spoke in North Eastern Province while oppressed as Somalis; were raped as Somali women during the Wagalla massacre. The Luo women who were killed during the post-election violence in Nakuru and Nairobi were killed primarily because they were Luos.

We cannot, as women therefore, move away from ethnicity and the problems it raises. I believe that some of our answers will come from grassroots women's organisations. I cannot emphasise enough that we need to study their structures, their experiences, and their philosophy. We need to find ourselves in our history, in our experience, by reconstructing our history, our past and identify the place where to locate ourselves.

Women, culture, ideology and ethnicity

Having looked at ethnicity and women during the constitution making process and during the referendum debates, it is important to reflect further on how culture, ideology and ethnicity affect women's struggle. Sometimes we fall into a trap when we refuse to accept our various identities openly; but we are not alone in this hesitation. We are a nation that comes to the table with many cards, many of which remain under the table. It has been our national culture. For example, we even do not call a community by name. We say, “two members of one community have been killed.” We do not want to say Pokots, Samburus, Kisiis or Kikuyus. There was heated debate before the 2009 census on whether the national census exercise should ask one to state one's tribe. We thought that by putting these issues under the table, they would disappear.

Women have hardly discussed the ethnic tensions; yet it is important. It is important we recognise that women share the culture of their communities and

that culture shapes all our messages. We need to appreciate the role of culture in the Women's Movement and in the constitution making. We can define culture as what is common in the minds of a given group of people. What they share as a group, about their tradition, their history, their political life and their economic life becomes their guide in what they do. The cultural contents are transmitted to children, both boys and girls through language, behaviour, education, process of sanctions and rewards. As a result, there is collective appreciation of what the values of the community are. Women are no exception to this collective thinking, an appreciation of them as a people, of a specific ethnic community, their origin, their values and goals and their primary identity is important if we have to enrich and sustain the Women's Movement and continue watering the seeds of liberation. Culture also influences what people see as historical truth, which is culture specific for in many cultures, truth is what is repeated as content and has been certified as true by many generations. These truths include what the community says about other communities and the stereotypes about who those are and what that means to "our" community and others.

Often, It is our culture, our people, our ancestors, our ethnic group, our history says this and that. Individuals, both men and women, do not question. Women are part of this culture which teaches them who they are. What the values of their communities are, how their community relates to other communities, and so on. If their community's history indicates that they have been marginalised by another community, that another community has historically dominated them, they will interpret any messages from even women from that community as the truth with the same suspicion that they will interpret that of the men from those other communities. They will see them as agents of the community and men in their community will see their women as victims of manipulation by the other community.

We must appreciate the fact that when women talk to each other even about women specific issues, they come together carrying a different identity, that of their ethnic community, which is their first identity. It takes long to see themselves as women first and since the battles in Kenya have been more ethnic based, it is not surprising that the 2005 referendum led to a temporary breakdown of Women's Movement. Whenever political leaders disagreed and took certain positions during the debate on the review process, women either followed them or went underground. You did not hear their voice because the community was a safer haven than the Women's Movement. Culture, tradition and historical experiences have promoted certain stereotypes about various communities and this discussion has been going on in the papers, particularly after the post election violence of 2008.

Myth, myth making and ideology

How do we develop ethnic stereotypes? Myths respond and address our emotions, our fears, our anxieties, our desires. They settle these anxieties and fears. Myths also help us justify and explain the world around us. This is how Dedan Kimathi, in the gallant Mau Mau tales, could just “drop from the sky” and prison doors would open for him; how he could crawl for seven kilometres in the forest.

We create a history that is often mythical, we create heroes where they do not exist; we make some ordinary people larger than life and give them a history to legitimise what we want to do or believe. We create our own stories of origin and sources of our leadership. Taban Lo Liyong in *Popular Culture of East Africa* (1972) states that among the Luo community, for example, they talk about where Ramogi came from, where his sons Dak, Bor and Dimo settled and why these sons separated, the roles of the wives in the quarrels, and so on.

Every community in Kenya has its story of origin. It has its history. For example, the Gusii trace their origin to a man called Mundu and his wife Sera who was either a Maasai or a Nandi. Mundu emerged from Mt. Elgon. Mundu and Sera had two sons, Masaaba and Kindu. The story explains why Kindu went to the fertile plains. Masaaba had three sons and a daughter. The sons were Mwambu, Mubuuya and Wanaale. The daughter's name was Nagundi. From these three sons came Gusii's various clans. The Agĩkũyũ say Gĩkũyũ and Mũmbi came from around Kĩrĩnyaga (Mt. Kenya). The couple had nine daughters plus one, and no sons. Gĩkũyũ prayed to Ngai, God of the Agĩkũyũ, to bring husbands for his daughters and they just appeared, thus originating the Gĩkũyũ clans that comprise the House of Mũmbi; that is, the Gĩkũyũ nation – *the Agĩkũyũ*. The myth is expounded to claim that Ngai brought the husbands from the Masaai community, the reason the two ‘nations’ had cordial relationships in the pre-colonial days despite what was considered occasional cultural “war tournaments” of raiding each other for livestock, women and girls particularly following graduation of fresh initiates to warrior ranks.

The story of Kauria, the peacemaker among the Kipsigis is well known. So is the history of Koitalel, the Nandi leader, and Gor Mahia, among the Luo. History, we note, is culture specific. For example, in the Saboti and Kilgoris constituencies, we have histories of the same constituencies by different communities. These stories are told to justify and claim legitimacy to leadership. In Kilgoris, for instance, the Maasai and Kipsigis each claims to have been the first to occupy the land. In Kitale, it is the Saboti and the Luhya communities. Each of them presented to the Constitution of Kenya Review Commission the history of their communities, each of them claiming their legitimacy to the land on which they stand; both of them cultural specific and historical. To their communities, these histories are true.

Women are part of the society's myths. They are bound by that history. Those myths that define their communities define them too. To expect them to deny what holds them together in search of a new universal common bond with other women becomes very problematic and naive because as Masheti in *Delusion* says, "the male culture is the *culture*, the male ideology is the *ideology* of the ethnic group." He notes:

"Patriarchy gives men legitimacy (from cultural/historical point of view) control over women reproduction, labour and conscience. The male ideology becomes "the ideology". The foundation of patriarchy is in the different social institutions which define from a male perspective, the norms, practices and behaviour that is acceptable. It has roots in long established traditions of male dominance which have made the male perspective, "The societal perspective"" (Masheti, M., 1993:1).

In Part I of this book, we discussed the arguments presented by members of parliament as they argued against the Affirmative Action Bill which sought to increase women's representation in parliament. Women, like other members, are socialised through myth making processes. The desire for men to retain power is promoted through a process which involves the language we use at home, in school, in church, at political meetings, through taboos, rewards and sanctions, among other things. These are not outdated arguments. The struggle for Affirmative Action and the debate in parliament and in other public gatherings are clear demonstrations that these arguments are alive and well. We, therefore, need to recognise the complex web of social myths within which women operate and, therefore, be more understanding when women do not seem to read from the same script and so condemn them less when they do not speak with one voice. Culture, history, myths, stereotyping and the primary identity, that is, ethnicity, have to be recognised. Myths will support and explain why we are in political positions or not, why, as a community, we are rich or poor; who is to blame for our misfortunes, and so on. Everyday we create myths about ourselves and about others. Myths have everything to do with our fears and desires. They are also useful in manipulating the world so that what is happening can be changed or held at bay.

These community myths have some historical reality which helps to reinforce the social, political conditions within which they are developed and employed. Women's interests can take a secondary position when ethnic interests come into play.

Ethnicity and women's representation

During the post Bomas debate and in conferences in readiness for a revised constitution draft, the discussion on the district representation for women was of concern to some MPs. During the discussion, some MPs from Mt. Kenya region decided that district representation for women would weaken their

strength in parliament and substantively increase the representation of the Rift Valley region. The procedure would increase Mt. Kenya region's representation by a mere thirteen representatives. At that time, six were to come from Kiambu, Thika, Murang'a, Maragua, Nyandarua, Nyeri—all in Central Province; three were from Mbeere, Embu and Kirinyaga and four from the Meru region, that is, Meru Central, Meru South, Meru North and Tharaka. That would have given Mt. Kenya region a total of thirteen women representatives, if women's special seats were created. On the other hand, the Rift valley would have had twenty-one representatives i.e. each from Kajiado, Narok, Trans Mara, Kuria, Turkana, West Pokot, Marakwet, Trans Nzoia, Mt Elgon, Keiyo, Uasin Gishu, Nandi North, Nandi South, Kericho, Buret, Bomet, Baringo, Koibatek, Nakuru, Samburu, and Laikipia.

Nyanza Province, which has a much smaller population than the Mt. Kenya Region, would have had a total of eleven women representatives, namely, one each from Kisii Central, Gucha, Nyamira, Kisumu, Bondo, Nyando, Siaya, Suba, Rachuonyo, Homa Bay and Migori. Those from the Central Region felt that this strategy would be unfair to their region which had a higher population density and, hence, the push for a different strategy.

When Rift Valley MPs learnt the reason Mt. Kenya Region MPs were rejecting district representations, they picked the issue and began campaigning for district representation. For them, bringing the women in through the district representation would be the best thing that could happen for it would give them an upper hand. What was initially a strategy created by women to ensure a clear method of Affirmative Action now became controversial. The women, myself included, had overlooked the power games, issues of fairness in representation, and so on. When districts representation was removed from the Bomas Draft but the principle was retained, women themselves decided that the one-third representation be removed. We had failed to see that the issue was no longer the district representation but the strength of the region/ethnic community in parliament. It is important to note that this conflict between women's interests and ethnicity was never substantially discussed at any fora of women that I know of.

Male politicians who did not support the district representation argued that a district woman representative would be very powerful. "Her role will be superfluous" they said. "She will be meddling with the constituencies." This was obviously related to the question of perceived or real fears of domination by majority communities and the desire for a majority communities to exercise their muscle and hold on to what they considered their right. They reversed the argument and used the same district concept to say that women had been removed from the draft. This made women believe that their agenda had been mutilated and that the principle of 30 per cent women's representation was no

longer in the draft. So, when Kenyans went to the referendum, the die had already been cast.

Ethnicity and voting at the 2005 referendum

There are many stories about why people voted for the referendum the way they did. But it is clear that it turned out to be a battle between those in government and those in the opposition—those for the Bomas Draft and those for Wako/Kilifi Drafts.

We are familiar with stories from Kenyans such as the one that said, “If Raila has read the Draft and said it is not good, I don’t need to read it. I will vote against it.” A man from North Eastern Kenya is supposed to have responded as follows when asked how he would vote for the draft:

Question: How will you vote?

Response: I will vote No? Responded the old man

Question: Have you read it?

Response: No, I have not read it.

Question: Why then will you vote No?

Response: If you want me to read it, I will get my son to read it for me and then I will say No. The answer is No. We have agreed as a community that the answer is No.

There is also the story of the civic education facilitator in the land of the Kipsigis who informed those who attended the civic education sessions that the section on the elderly said that when one reached the age of 65 years, the government would transport them to old people’s homes in Central Province and while there, they would only be given porridge. “That is the only meal the old people will have,” he emphasised. The effect of this misinformation was that the old men, women and the youth present would swear they would not allow the draft to pass.

There was also the story of the female minister who went around saying the constitution was bringing foreign cultures to their communities. She told her people that other communities wanted girls to inherit land so that their men could marry these girls and take over the land belonging to other communities.

Conversely, this misinformation also applied to those who said “Yes” to the draft bill. Very often, after taking the communities through the draft constitution in Central Province, the participants would then ask the leaders from their communities which way they should vote. Even as a commissioner, because they knew I came from the same community, they would ask me, “Which way should we vote? What is your view?”

In a case like this one, where ethnicity, regional interests, party interests vis a vis women interests prevailed, it should not be surprising that women’s voice

was muzzled. These issues were tied to the destinies of their communities. Their primary identities and even political affiliation are also identified with ethnic interests and could not be isolated. They too, like other members of their communities, took refuge in ethnic and political positions taken by their communities.

Stereotyping women and ethnic ideology

In essence, I believe that the feminist approach to women's issues is not to compound inequalities but to create a more equitable society for both men and women and for all communities. To create a just society and environment within which communities and individual men and women will prosper, feminism must not be a tool for promoting inequalities of any sort including those of representation of various groups, ethnic, racial or clan.

It has been established that myths respond to and address our emotions, our fears, our anxieties, our desires. They settle these anxieties and fears. Myths also justify certain things that we have a problem with, for instance, why oppress women? It is wrong to oppress a human being. Therefore, myths give one the rationale to do it. They tell you that women are the weaker sex; they need to be protected. They are not as clear headed as men and therefore it is in their interest to be supported and protected from other men who are not their husbands, sons or fathers because they can be manipulated.

What about enslaving human beings? You need to create myths about them too so that you can deal with facts and the guilt; so you argue as C.L.R. James (1972) tells us in *Black Jacobins*, that these category of human beings are at a lower level of development, hence, they are not yet fully developed. That they tend to be ruled by emotion rather than reason, that they are animists—not Christians, that they worship many gods, are primitive, they lie and sometimes would even tell lies that ruin an otherwise good argument.

In many cases, the Bible comes in handy. The Holy Book tells us that Eve is the one who gave Adam the apple and, therefore, the cause of all our problems. "Imagine we would still be living in the Garden of Eden if it were not for Eve," is a statement commonly heard. The Adam and Eve story confirms that the woman is the source of all evil. Saul, who saw the father's nakedness and was cursed, is the father of black people and that is why they have up to now not caught up with the rest of the world. They are cursed because God was unhappy with Saul.

We live in a society that inherited its politics from the colonial government where stereotypes of various ethnic communities were and continue to exist. While the Agikũyũ are said to be hardworking but love money too much and would do anything to get it, the Luos are said to love education and

superfluous lifestyles. Luhyas are said to be ready to play second fiddle to anybody but are also said to be smooth operators.

“The Agĩkũyũ” are very hard working; that is why they are hated by other communities.” The Agĩkũyũ have to explain this to themselves to absorb the hostility from other communities. It settles their mind and assures them that they have not done anything wrong. But many non-Gĩkũyũ will give you the answer that Gĩkũyũ people are hated because they are greedy and arrogant. What about the Luhyas? They are said to be unreliable; they are not trustworthy, and so on. You need to give them lower positions. The Kalenjins are secretive. You could be staying in the same house with them but you do not know what they are planning against you. The Luos will not do dirty work but would prefer paying others to do it for them. They love life and good things. They invest in big cars, big houses, beautiful women, they endeavour to and speak Queen’s English. The Kisiis and the Merus have uncontrollable tempers. Wars with them never end; you fight with them and you think the battle is over and the next day they come back to you and ask you, “Why did you hit me yesterday?” When you thought it was over, it begins all over again.

These stereotypes may appear harmless, for as we said earlier in this chapter, myths do not deal with facts. Myths address our fears and desires; they become substitutes for facts.

What is interesting about ethnic ideology and myths is that it becomes a self-fulfilling prophecy and begins to play out in our intuitions. Often, the myths about the Agĩkũyũ, the Luos, the Luhyas, the Kalenjins, the Kambas and other Kenyans determine how we relate to members of other communities. Building trust in our ethnic relations demands development of new social myths and gradually dismantling the old/current ones.

Ethnic politics is ripe in many of our working situations. It may not be talked about openly but what happened during the 2007 elections in Kenya and the post election violence in 2008 as well as the referendum campaign and the defeat of the 2005 Draft Constitution were ethnic tensions being played out in the open. Competition over resources, over leadership and over recognition, for instance, has been with us for long. Ethnic tensions, often exploited by politicians for their own personal interests, are rooted in ethnic stereotypes and ideologies.

Like gender stereotyping, ethnic stereotyping is not just in the mind. It has a perfect material reality, which helps to reinforce the social, political and economic conditions within which they are developed and employed. Competition over scarce resources and control of political and economic power becomes the basis for stereotypes. Each community develops its own myths. At times, those who see themselves as marginalised, gang up against the perceived rivals.

The “us” vis a vis “them” comes into play when you think of ethnicity. Ethnic identity for women is critical. That is their basis for existence. If your community is threatened, you, your family, your people are also threatened. Even the women in the other community, the community that seems to threaten your own, become a source of concern. “What do they have under their sleeves? Are they the ones who are speaking or is it their communities? What is the trap? Can you trust them?”

These fears came into play during the Constitutional Review 2002 process. At Bomas, even when women agreed on all issues concerning themselves such as representation in the lower and upper house, government districts and regional assemblies, or inheritance issues, the Bill of Rights and so on, when it came to structures of government, especially the creation of regions, women did not have a common position. Their ethnic identities took centre stage and since these were the crucial issues that broke the Bomas Constitutional Conference into two, women could not help the conference move forward. Hence, the need to reflect on the second part of the covenant: *negotiating a new social order between the people and the state*. A very hard job for women.

We cannot as women, therefore, move away from ethnicity and the problems it raises. Let me state once again that I believe some of our answers will come from women’s organisations at the grassroots. I cannot emphasise enough that we need to study their structure, their experiences, and their philosophy. We need to find ourselves in our history, in our experiences by reconstructing our history, our past and identify the place where to locate ourselves.

In *Reclaiming My Dream: Stories by Warukenya* (Kabira and Njogu, 2010) we note the importance of us, African women, of going back to our oral history and oral literature because I believe that there exists the story of women’s resistance that keeps on being ignored. Women’s resistance is buried in the name of correct analysis of oral literature. We have to find our past in order to deal with the present and celebrate the river of resistance. Once again, I take my hat off to Margaret Ogola. Her novel, *The River and the Source* locates the women’s struggle for liberation in the context of the Luo tradition and culture. Women’s Movement, has made efforts in making some critical choices such as how to deal with political power. The movement has tried to define the type of electoral system that we should have and the reasons for devolving power to the people, among other decisions. The need for transformative, more inclusive electoral processes has been identified as critical. Women at the grassroots level have also moved forward in designing their own structures and their own philosophy. At the beginning of this book, we talked about the grassroots Women’s Movement and their efforts to mobilise and manage their lives and institutions. We need to reflect on these movements, these initiatives and look at the women’s experiences and ensure that their experiences are used to

transform our societies, our political, economic, religious and cultural institutions.

Creating a new ideology and new institutions

Angela Davis, in *Daughters of Africa* (1992:570) notes that black women have organised themselves for a long time. She refers to the formation of the National Association of Coloured Women's Club in 1896 whose motto was "lifting as we climb." The club's main objective, as she says, was political in nature. The primary objective was to defend black women and men from the evils of racism. She says that a hundred women from ten states met in Boston and declared that theirs was a Women's Movement, led and directed by black women for the benefit of women and men and the whole community. The General Federation Women Club, which was established in 1895, and which reflected consensus of middle-class white women, did not articulate the interests of black women. She argues, and I concur with her, that a women's movement reflects the specific conditions and specific interests of that society. This, in my view, is the reason we have to look at Women's Movements and women's primary identities which, in most cases, are within the context of ethnic identities. These primary identities often define how women see issues of governance, inequalities, politics, and leadership. We need to reflect on how this primary identity continues to influence women's movement and how it also impacted on the struggle for the comprehensive review process in Kenya.

In this respect, many questions come to mind. They include how women can employ principles that ensure that we address disparities across gender/sex, as well as ethnic, region and class. How we can work towards a struggle that will embrace not only women but also other members of society that are oppressed in different ways, among them minorities, in terms of ethnicity, politics, religion and even numbers. Women in Kenya, for instance, are concerned about their levels of representation, about access to resources, inheritance, poverty, education, access to health, security and gender-based violence, among other issues. But these have also become concerns of many men. They are also concerns of many communities that cry out against exclusion, marginalisation and lack of access to either political or economic power. So, unlike the so called divide of the elite vis a vis grassroots women, educated vis a vis those who have not gone to formal schools, divisions which are normally not the concerns of the women's movement, but of those who want to create discord among the women, the question of ethnicity and women's movement becomes a primary concern. Those of us who stand in the line of duty must listen to those not so clear voices of women from all communities and find ways by which we can "lift as we climb." We must listen to the hearts and voices of all women. We must organise our movement around their needs and concerns.

We must look at women's issues and the struggle within the context of ethnic interests, social, political and economic exclusion; the clan nature of our society and other inequalities. We must look for strategies that will help us build communities of love, those that will help us dismantle oppressive structures; that will release the potential of women, men and indeed communities so that they can participate, benefit and shape their own destinies. We must be guided by this philosophy of lifting as we climb. We must be guided by the understanding that women have many identities—ethnic identity being one of them. These identities occupy their souls and at times they are in conflict. We must appreciate the dilemma women sometimes face. We have often not addressed this question and we have allowed it to hamper women's progress. We must find ways to recognise the ethnic identity, celebrate it, acknowledge it and see it as cause for celebration rather than a reason for division.

Part II of this book gives testimony to the common interests of women in the whole country but the struggle to negotiate at the conference and the referendum debate, more so the 2007 election campaign and 2008 post election violence, show how important it is for us women to address these issues and clarify the philosophy that guides our movement.

For me, the struggle for women's movement and their efforts in negotiating for a double covenant is a spiritual struggle. This is a struggle towards a new social order where men and women and boys and girls live in communities and nations of love. That is why as women, we must continue negotiating the double covenant, address ethnic tensions, inequalities, electoral systems and Affirmative Action for those socially excluded by our systems and do so boldly. In this respect, the 2006 landmark ruling by a constitutional court ordering the electoral commission to create a special constituency for the Ilchamus community so that they could be represented in parliament was an important recognition of the Affirmative Action measures. It is the spirit of Affirmative Action struggle by and for women and marginalised groups. In saying so, we are not promoting creation of new boundaries indiscriminately but are looking for a better electoral system such as proportional representation and building within it, mechanisms to ensure inclusion and reflection on diversity, including ethnic diversity. That is also the reason we must never let go the proposals we made at the Bomas National Constitutional Conference in terms of representation of women, ethnic minorities, persons with disabilities, as well as all other socially excluded groups. We must continue to struggle for every one of those constitutional provisions. As the saying goes, "the nation is as strong as its weakest point." We need to expand our philosophy to appreciate our diversity in order to create a broad philosophical framework that incorporates women's interests in their various identities. We must agree on the guiding principles, in appreciating our diversities and listening to the conflicting interests. With courage and humility.

It is our mission to contribute to the demolition of ethnic warlords' mentality and bring sanity to our political leadership. But we cannot do this without openly and courageously addressing our many identities. We should be able to say with Chairman Mao Tse Tung: "Let a million flowers blossom." As Koigi wa Wamwere argues in *Towards Genocide in Kenya: The Case of Negative Ethnicity* (2008), we must confront ethnicity. In this respect, women must be at the forefront of this struggle. We must confront social myths that promote ethnic stereotypes and entrench negative ethnicity which leads to loss of the gains already realised through the struggle towards democratic governance. Women must lead on this less travelled path. I agree partially with Makau Mutua in his article: "*It is the 'Tribe' that stunted Kenya's growth.*" He argues:

"We need an issue based state but this will not happen unless Kenyans open up and start to talk frankly about how to transcend the Tribe in its politics and matters that affect all of us and our communities" (*Sunday Nation*, July 27th 2008).

Women can move in this direction and help build a national culture and promote and celebrate ethnic cultures. I liked a metaphor of the kind of society we could have that was given by Hon. Julius Sunkuli, former MP, Trans Mara Constituency, at Safari Park Hotel during the negotiations of the review process 1999. He said:

"We can have a society that looks like a plate of salad. You have carrots: orange/red; green vegetables deep/green/light green; red beans, tomatoes, ham, avocado, baked beans, onions, white maize/yellow maize. All the ingredients are beautiful, independent, colourful and delicious. We don't have to mix beans, gĩtheri, potatoes and greens into one unrecognizable colour..." (*Author's Paraphrase*).

Similarly, Kĩrĩro wa Ngũgĩ declared, "We are not 'one people'; we are a diverse people living in a geographical unit; we need to accept our ethnicity for better management of our society" (*Daily Nation* April 28th 2008).

Under this philosophy of unity in diversity, celebrating our diversity will help us break away from stereotypes and stop hiding behind our ethnic communities. Within this context of a diverse nation, women have tried to focus on that which they think unites them. They have travelled together for more than 20 years in pursuit of a new constitutional dispensation which would guarantee equality for women to reclaim their rightful place in society. They travelled together on the road towards Affirmative Action for the women's representation in decision making positions, particularly in political leadership in parliament, local authorities, and political party structures. They started political parties or took over political parties like the National Rainbow Coalition Kenya chaired by Hon. Charity Ngilu. Hon. Julia Ojiambo became leader of the Labour Party of Kenya; Jane Ogwapit, Chair of Ford Asili; Rose Waruhiu, Assistant Secretary of Democratic Party; Hon. Wangari Maathai,

leader of the Green Party; and Hon. Martha Karua, leader of the NARC Kenya party. Women also ensured that the concept of gender mainstreaming in political parties was kept alive. The Collaborative Centre for Gender and Development was the first to work on the second Political Parties Bill and to popularise it among women. The Bill, now an Act of Parliament, has ensured Affirmative Action in executive committees of political parties, among other gains. Hon. Phoebe Asiyo tabled Affirmative Action motion in 1997 and had also proposed Affirmative Action in political parties and the funding of the same.

For almost 20 years, women have moved together, focused, determined and with a clear agenda. They have moved together believing that their being women and being victims of the patriarchal culture and ideology, a system that knows no ethnic boundaries, was enough to travel to their destination. But the failed 2005 referendum and the 2010 negotiations on other contentious issues proved that they have to deal with ethnic identities as well.

We know that ideology influences our religious beliefs, politics, morality even our art, our songs, our culture, our tradition. However, women ignored the fact that ethnicity is almost our primary identity since we have not yet built a nation that acknowledges and celebrates diversity. Kenya remains a conglomerate of ethnic groups. We forgot, that ideology, which includes ethnic ideology, is the medium through which we comprehend and interpret reality. That when an ethnic group feels threatened, the women in the community being part of that community, are threatened too and those threatening the community from the other groups also include the women.

The 2005 constitutional referendum saw Kenyans take on their diverse ethnic identities. Various communities interpreted different clauses in the Wako Draft depending on their community interests and beliefs. The period experienced ethnic animosities that were portrayed through ethnic stereotypes. The commentaries made by Kenyans about other ethnic communities whether serious or not, revealed the importance people attach to their ethnic identities. Women's voices began to disappear from the debate as Kenyans picked on the voices of members of their communities. Many women returned to the shadows. Prominent personalities began to identify with their ethnic communities and lobbied people for or against the draft constitution based on what they considered to be their community's interests and other political interests. As stated earlier, women's voices went to the background, returned to the shadows or in a whisper supported the side they thought was in line with their ethnic group. Ethnic political interests took centre stage. We need to appreciate as we continue with the struggle that what we see and believe depends largely on our ideology. It guides our interpretation of reality.

Ruth Whitney, a feminist scholar, says in her book *Feminism and Love* (1998) that feminism, after rejecting patriarchy, affirms the process of liberation,

including honesty, community support and unity.” She continues to state that women become actors in creating new societies of love and in emerging from the shadows. Women need to say “yes” to their identities, their gender and promote love for themselves and their communities.

In this we shall promote and celebrate our diversity, harvest our great rich traditions and create new ones that help us create a National ideology that appreciates diversity and promotes inclusivity for the benefits of all our people. As women moved in the struggle towards a new constitutional dispensation, they made some strategic choices. These choices are the subject of our next chapter.



Women's Strategic Choices

Introduction

As the struggle for women to negotiate their way to the centre of the country's political, social and economic management system and decision making positions continued, the need to be strategic was critical. Women moved away from dancing from the sides to taking their place on the dancing floor with others. They made strategic choices, some of which are discussed in this chapter. These include: focusing on Affirmative Action for women's representation in political and appointive bodies; searching for a better electoral system that would be inclusive, democratic and women friendly; rejecting/raising awareness on gender based violence; and, creation of structures for organising and coordinating women in the process.

Affirmative Action for women's representation was the overall rallying call that kept women together and whose progress has been monitored with passion. It became the fulcrum around which women talked, lobbied and strategised. Women have been so passionate about this strategy that when the Parliamentary Select Committee (PSC) removed the principle of 30 per cent in the National Assembly, women believed that all their gains had been scrapped. The focus on Affirmative Action in this chapter is in recognition that this policy of utilizing positive action for women's representation in parliament and in other electoral bodies and appointive positions became the fulcrum around which the Women's Movement revolved. After the first National Women's Conference in 1997, through the Hon. Phoebe Asiyo motion to amend the constitution and increase women's representation, Hon. Beth Mugo's motions on the same in 1999 and 2000, through negotiating for space in the review process from 1998 to 2010, and negotiating through Constitution of Kenya Review Commission (CKRC), Bomas, the Referendum Draft and finally, the Harmonised Draft constitution 2010, Affirmative action came to mean 30 per cent women's representation. It became the heart and soul that bound women together throughout the process. This chapter discusses in some detail, the philosophy and the theory behind the struggle to move towards the centre.

Affirmative action: the critical unifying factor

The focus on Affirmative Action for women in decision making has been a struggle since 1992. When Prof. Maria Nzomo, then a member of Association of African Women in Research and Development (AAWORD) introduced the idea of 30 per cent as the critical mass necessary to make any significant impact in any decision making bodies, Kenyan women took the concept and ran with it. It was also one issue that has consistently brought women together. They were precise. This bore some fruits even as the struggle for a new constitutional dispensation was going on. These fruits includes the presidential directive of 2006 for women's 30 per cent requirement in public service, Affirmative Action for girls at universities, and awareness creation among various political parties. Women argued that this strategy would focus on remedying both past and continuous discrimination based on gender/sex, ethnicity or even race as it was used in South Africa, Uganda, Tanzania and many other countries.

The passing of the motion on April 19th 2000 seeking leave to table Affirmative Action Bill by Hon. Beth Mugo for increased women's representation in parliament and local authorities was only but the beginning of a long and tedious struggle for women's liberation in Kenya. Women applied every tactic available. The concerted efforts and utilisation of all available human resources, skills and expertise as well as financial resources from the various women NGOs and development partners was used. Women developed and shared lobbying and advocacy materials on Affirmative Action. They built support to create national momentum on Affirmative Action with the general public, in both print and electronic media. They also built partnerships and collective ownership of the Affirmative Action strategy, particularly for women's representation in parliament, local government and appointive positions for all Kenyan women.

Women's organisations lobbied political parties, sensitised women at the grassroots level, lobbied all MPs using face to face methods; held round table discussions with small groups of MPs and wrote letters and memoranda. They also did individual lobbying and engaged in development and dissemination of lobbying and advocacy information packages for the MPs and other stakeholders, identifying influential individuals, especially women leaders, to lobby specific MPs, among other strategies. Women dialogued at national and grassroots levels. They negotiated with CKRC, with Bomas delegates, Kilifi talks, with the Committee of Experts and faith based organisations.

Women also explored strategies for the implementation of the Affirmative Action in the Kenyan context. Given the social-political climate, focus was on the district representation system that appeared most appropriate. Women even organised a meeting on September 4th-5th 2000 which was attended by Hon. Minister Mary Nagu of Tanzania, and Hon. Winnie Byanyima and Hon. Hope

Mwesigye, both of Uganda in order to consult with their regional counterparts and share lessons learnt in Tanzania and Uganda.

Apart from representation in political leadership and appointive positions, women also looked at existing Affirmative Action programmes and actions such as the lowering of one mark for entrance to public universities and deliberate Affirmative Action for specific regions which are either geographically marginalised or lack resources. They noted that the state had often taken special measures to stimulate development. This was reflected in school feeding programmes, provision of extra resources to the constituency fund in some areas, utilising the equalisation principle; hardship allowances for teachers and the quota system in the education sector, among other initiatives. This they did in order to justify that Affirmative Action had been utilised for the benefit of many other categories of people and therefore there was no reason it should not be used to address historical and cultural discrimination against women.

Women, however, focused on Affirmative Action for women's representation in political and elective bodies such as political parties, the national legislature and the local governments, in addition to appointive bodies and public service employment.

It is to be noted that this focus was successful—the new constitution is a testimony to this success. For ten years, women had monitored specific clauses and had clear indicators of success or failure. That is the reason it was absolutely unforgivable for the Parliamentary Select Committee on the constitution to remove the provision of 30 per cent from the National Assembly in the Harmonised Draft, 2010.

Some of the provisions that demonstrate how focused women were in ensuring entrenchment of the Affirmative Action are in the committees on National Goals and Values, Representation of the People, Devolution, and the Legislature where women were very active so as to ensure the 30 per cent representation. These provisions are captured in the summary of women's gains under the section titled "Basket of Fruits of Bomas Negotiations" in this chapter and in a summary form at the end of Chapter 8.

Why the struggle for affirmative action

Frene Ginwala (1998) in her forward in *Women in Parliament Beyond Numbers*, observes:

"The seeds of democracy lie in the principle that the power to make decisions about people's lives, society and their country, should derive a choice by those who will be affected. For many centuries, the basis of this legitimacy was limited and many were excluded from making a choice: slaves, those without property or formal education, those not "civilised" or

not part of the dominant culture or religion in society, people of colour, of a particular race, of ethnic group, indigenous people of countries and overwhelmingly, women” (p.14).

It is evidently clear that participatory democracy must take into consideration the voices of those who will be affected by decisions being made. Conscious and deliberate steps must be taken to ensure that even the minorities or any other disadvantaged group that were initially marginalised are included in decision making and mainstream development processes. This is based on the fact that any laws passed affect these groups that were deliberately left out by the definition and operation of the ideology and theory of democracy.

Proponents of the traditional definition of democracy for centuries did not see or even consider that the concept and the reality of its implementation excluded majority of the people. It is surprising that patriarchal leadership in our country has for long refused to acknowledge this fact. It required individual leaders like Julius Nyerere, Nelson Mandela, Paul Kagame, Yoweri Museveni, Mwai Kibaki, among other leaders, to recognise this fact and implement the same. The new constitution promulgated on August 27th 2010 is a milestone in addressing the issue of affirmative action not only for women but for many excluded groups including minorities, persons who are physically or otherwise challenged, among others. When you are dealing with centuries of oppression, of exclusion, of marginalisation, what appears in the constitution in terms of Affirmative Action for women’s representation and other marginalised groups is no mean achievement. This strategy that requires deliberate plans that seek efforts by state and other institutions to combat discrimination and promote equal access to positions and resources in order to promote equitable development, is a milestone in our country today.

At independence, the provision of an Affirmative Action initiative to promote African participation in business by lowering the fee for putting up business within the country’s central business district in Nairobi saw the increase of higher participation of Africans in business. In turn, Africans were able to improve their businesses. Later, the lowering of entry requirements for female students at the public universities saw an increase in women’s participation at university level. The quota system of education also saw the rise of greater participation of groups in various regions where girls and boys with lower grades were admitted into national and provincial schools in order to create opportunities for communities in less developed areas.

In the struggle for affirmative action, Kenyan women looked at other countries that have used the quota system for increased women’s representation at different levels. According to Women’s Rights Series-W-10 Leslie (2006), the Labour Party in Britain, Ethiopia, Tanzania, Uganda and Rwanda have been able to use the quotas to ensure women’s representation in their various parliaments. Representation could be party quotas as the Political Parties Law

(2008) indicates for leadership organs of political parties or through party candidate quotas. France, for instance, has considered quotas through law, through local, regional and European elections. For them, women's representation moved from 22 to 47.5 per cent in 2001. The Series also indicate that in Germany, the Green Party introduced quotas in 1980, the Social Democrats in 1988, and the Christian Democrats in 1996. Candidate quotas are adopted more frequently under the Proportional Representation (PR) systems but they have a position of female representation regardless of the electoral system and a greater impact on the party quotas. During the 1997 general election, the Labour Party in Britain nominated 158 women; 101 of them were elected (63.9 per cent). The Conservatives Party had 67 women of whom 13 were nominated (19.4 per cent). As for Liberal Democracy Party, women were nominated for unwinnable seats. The introduction of systems involving PR for elections to the Scottish Parliament and National Assembly for Wales and European Parliament obliged participating parties to adopt a list system (Fawcett, 2006).

Women of Kenya have tried to sell the quota system for a long time as evidenced by the Phoebe Asiyo motion of 1997, Hon. Beth Mugo's motions of 1999 and 2000, and Hon. Martha Karua's Bill of 2006. This is a living testimony to their efforts. They even discussed the possibility of a twinning system during the debate on 50 seats and proposed this to the political parties for debate. In the twinning system, members of the constituency vote for a man and a woman. For women, the argument by the Parliamentary Committee on Constitutional Review that they had to get rid of the 30 per cent provision for women in the National Assembly to address the "bigger picture" of equitable representation did not hold water because they then went ahead to increase the constituencies. We argued that instead of dividing the constituency physically, we could have used the twinning system where instead of dividing the constituency into two, each could be represented by two people, a man and a woman, thereby increasing women's representation and address the "bigger picture".

Women in this country agree with the critical mass theory that once the proportion of women in the legislature rises to around 30 per cent, there would be a change in the policy agenda to reflect more accurately, the interests of both men and women. Hon. Oki Ooko Ombaka argued thus in 1997 in parliament during the tabling of the Phoebe Asiyo motion.

International evidence has shown that the only way to significantly increase the number of women in parliament is through the use of positive action measures. Countries that top the international women's representations including Rwanda, Sweden, Norway, Finland, Denmark and Sri Lanka; all use the quota system. Rwanda, a country emerging from genocide and major political upheavals, has through the positive action, topped the world in this area with

48.8 per cent. In Rwanda, they have 53 directly elected women in parliament. South Africa and Mozambique both have close to 30 per cent (Tan, Anamah, 2006).

Adoption and implementation of Affirmative Action, is the most effective route to ensure greater participation of women in decision-making positions, including parliament. It is the route Uganda, Tanzania, Rwanda, South Africa, Mozambique, Ethiopia, Eritrea; even Somalia (a nation starting to rise from the ashes of war) recognise. Many other nations have moved in the same direction. Through this system, progress is being made world wide. In 2005, thirty nine countries that held elections used positive measures. The average ratio of women parliamentarians in these 39 countries was double that of other countries. As of 2006, 90 countries had used special measures to ensure greater representation of women in parliament.

In 2005, the Labour Party of Britain used positive action through shortlists in winnable seats and doubled the number of women from 62 to 121. Rwanda women were 48.8 per cent from the 2006 election, the highest in the world then, while South Africa and Mozambique were 30 per cent. Nordic countries have adopted the quota system guaranteeing that 40 or 50 per cent of a party candidate list are women. The ten highest ranking countries in terms of women's representation all use proportional representation electoral systems. Political parties in various countries have also introduced quotas e.g. Germany, Ireland, Sweden, and the United Kingdom Labour Party. These parties indicate positive leadership that our political party leaders need to learn from. The emphasis here is that countries with majoritarian electoral systems like Kenya have proved to be the worst possible systems for women. Women in Kenya have consistently argued that there is need to increase women's representation in parliament by a substantive percentage through positive action.

If the 10 highest ranking countries in terms of women's representation, use proportional representation in their electoral system using party lists, it can be argued that party lists offer more opportunities for women to be included without simultaneously excluding men (Fawcett, 1966).

In arguing a case for quotas in the Pacific Region, Dr. Lesly Clark (2006:2-3) in her *Affirmative Action–Gender Representation in Parliament: Quotas, Political Parties and Reserved Seats*, argues as follows:

- Quotas for women do not discriminate, but compensate for actual barriers that prevent women from their fair share of the political seats;
- Women have the right as citizens to equal representation;
- Women are at least 50 per cent of the population so they have a right to an equal share of the decision making that affects their lives;
- How can it be justified that men occupy more than 80 per cent of the parliamentary seats around the world?

- Several internationally recognised conventions on gender equality have set targets for women's political representation including Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and BPA;
- The presence of women gives greater legitimacy to parliament;
- More than 90 countries from all continents have adopted some form of quotas and have benefited by the contribution of women;
- Women experiences are needed in political life;
- Men cannot adequately represent the interests of women;
- Only many women can represent the diversity of women;
- Women are just as qualified as men in their own way but women qualifications are downgraded and minimised in a male dominated culture;
- Quotas do not discriminate against individual men. Rather, quota rules limit the tendency of political parties to nominate only men;
- Quotas need only be used until the barriers preventing women from entering parliament are removed;
- The history of women's representation in parliament proves that there are no other alternative methods for significantly increasing the number of women in parliament in a short period of time;
- For the voters, the opportunities are expanded, since it now becomes possible to vote for more women candidates;
- Quotas may produce conflicts but only temporarily;
- Pacific countries are facing enormous challenges in the next two decades that will require the brain power of all its citizens to solve. It makes no sense to ignore 50 per cent of the problem solving power of a country that women can contribute to;
- The countries that include women in their decision making will have an advantage over those that limit themselves to men's perspectives and solutions;
- The leadership style of women which stresses consensus, collaboration and partnership is more likely to avoid intra and inter country conflicts with its resulting economic and social cost.

In Kenya, much has been discussed and the media has captured many debates about Affirmative Action. It is now almost clear to the public that Affirmative Action is a deliberate, though temporary measure.

The following is a highlight of some affirmative provisions in the 2010 constitution.

i) Membership of the National Assembly

97. (1) The National Assembly consists of:-

- (a) two hundred and ninety members, each elected by the registered voters of single member constituencies;

- (b) forty-seven women, each elected by the registered voters of the counties, each county constituting a single member constituency;
- (c) twelve members nominated by parliamentary political parties according to their proportion of members of the National Assembly in accordance with Article 90, to represent special interests including the youth, persons with disabilities and workers.

ii) Membership of the senate

98. (1) The Senate consists of:-

- (a) forty-seven members each elected by the registered voters of the counties, each county constituting a single member constituency;
- (b) sixteen women members who shall be nominated by political parties according to their proportion of members of the senate elected under clause (a) in accordance with Article 90;
- (c) two members, being one man and one woman, representing the youth;
- (d) two members, being one man and one woman, representing persons with disabilities.

iii) Devolved government

Principles of devolved government

175. County governments established under this Constitution shall reflect the following principles-

- (c) no more than two thirds of the members of representative bodies in each county government shall be of the same gender;

177. (1) A county assembly consists of-

- (a) members elected by the registered voters of the wards, each ward constituting a single member constituency, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year;
 - (b) the number of special seat members necessary to ensure that no more than two thirds of the membership of the assembly are of the same gender;
 - (c) the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament; and
 - (d) the Speaker, who is an ex officio member.
- (2) The members contemplated in clause (1) (b) and (c) shall, in each case, be nominated by political parties in proportion to the seats received in that election in that county by each political party under paragraph (a) in accordance with Article 90.
- (3) The filling of special seats under clause (1) (b) shall be determined after declaration of elected members from each ward.

These provisions and many other not highlighted here are no mean achievements.

Other affirmative action efforts

During the Kenyatta Day celebrations in 2006, President Mwai Kibaki directed the civil service to ensure that at least 30 percent of recruitments, promotions and appointments of all public service jobs were women.

In his speech, he said:

“The women of Kenya have provided a critical mass for the economic development. The enterprising nature and innovativeness of Kenyan women is clearly evident in our towns, market places, farms and in the service sectors. There are many more women qualifying from our colleges and universities today than was the case in the past. However, there is a serious imbalance between the women employed in the Public Service and Private Sector and in the leadership in the country in general. The development of this country depends on how efficiently we utilise our human resources” (*Kenyatta Day Celebration, Presidential speech, October 20th 2006*).

The head of the Public Service, Ambassador Francis Muthaura, issued a circular to all public service institutions to implement the directive. However, the implementation of the same has been painfully slow. The amendments to the Constituency Development Fund (CDF) Act 2007 tabled by Hon. Julia Ojiambo for adoption of the 30 per cent principle for women's representation in the composition of the various management committees on CDF, were not passed in parliament. The Constitutional Amendment Bill, 2007 tabled by the then Minister for Justice and Constitutional Affairs Hon. Martha Karua proposed creation of 50 special seats for women in parliament but it did not take off. There were not enough MPs in the house to discuss a Constitutional Amendment Bill. The MPs had conveniently absented themselves. So, the bill was shelved.

A Bill on Employment which was tabled by the late Hon. Newton Kulundu, Minister for Labour and Human Resources Development, provided another opportunity to test the spirit of Affirmative Action. Women's Political Alliance of Kenya (WPAK) in collaboration with Collaborative Centre for Gender Development (CCGD) shared the Gender Action Duty Bill with the Minister and other key officials in the Ministry of Labour and Human Resource Development in an effort to have the Ministry table it in parliament. The amendments to the Employment Bill tabled on October 9th 2007 by Hon. Julia Ojiambo were shelved by parliament. The debate on the amendments generated several recommendations from members of parliament. Key among them was from Hon. Moses Akaranga, the then Minister for Public Service who noted that implementation of Presidential Directive on 30 per cent women's representation in the public service fell under the docket of his

ministry and that a process had already begun on how to ensure effective implementation of the directive. The Ministry of Gender, Children and Social Services, the Women Enterprise Fund, the Presidential Directive of 30 per cent (although it had no mechanism for implementation), indicate that during the Kibaki administration, it was the season for harvest for women's struggle. The climax was the promulgation of the new constitution on the August 27th 2010 after 67 per cent of Kenyans resoundingly said 'YES' to the 2010 Draft Constitution. It was the most heartening moment for women of this country and for many other marginalised groups.

Women have used many strategies to move the affirmative action agenda in all fronts. We must build on strategies that organisations and women leaders have used which have borne fruits. Chinua Achebe (1996) in *Things Fall Apart*, talks of Eneke the bird who, when asked why he flies without perching said it was because men have learnt to shoot without missing. We need to continue working with women leaders, women's organisations, women councillors, women in civil service and in private sector to building linkages and ensure that the fruits of this struggle are translated into reality for all.

Changing our electoral systems

As discussed earlier in this Chapter, in an effort to identify a more women friendly electoral system, one that could accommodate interests of others and move away from "first past the goal post" electoral system, women diligently studied "the first past the post" majoritarian system of elections and compared it with other electoral processes. We had position papers from experts such as Mr Francis Ang'ila and Mr Wachira Maina, among other experts. The reason for this was that women, in their hearts and souls, believed that there should be a different system of electing leaders in Kenya without the aggressive, violent and divisive characteristics of our current process. The idea that politics is a dirty game, that you have to bribe, you have to have your local militia, you have to collect all the dirt you can get to use against your opponent, did not seem right. That cannot be the nature of politics, they said.

Women have developed their systems of elections at the grassroots level and in many cases, the election of leaders has gone on without much acrimony. In addition to this, it has been much more a leadership of service than a job where you are paid to lead. In women's views, parliamentary elections, for instance, have an ideology that is contrary to what the Women's Movement has stood for. Parliamentary elections have been about the philosophy of "eating"; that is, accumulating wealth, legally or/and illegally and how one can go to parliament to ensure he/she is "eating" too. This eating philosophy was reflected in Kenya's tenth parliament in the way it put its self-interest at the fore front, deciding on its salaries and allowances thereby conning the taxpayers and the nation as a whole.

The attempt to change the political system and to introduce the proportional representation by women has been a way of humanizing the political system and expanding democratic space to various members of society. The cry of minority communities such as the Ogiek, Njemps, Sengwer, the Oromo people, persons with disability, and women, among other marginalised groups, resonated well with the Women's Movement. It is recognition of the fact that some of these minority communities will never find representation on the policy decision making bodies because of their numbers while for others, it is because of the nature of institutions, culture and lack of economic power. Women fall in the latter category. Yet, we recognise that the experiences of these groups will enrich our institutions of governance and also take the interests of those communities into consideration at all times. The need to break through the politics of *Me, I, Myself* and reject the traditional Machiavellian type of politics so as to adopt a new definition that is more humane, more inclusive and more sensitive to our society's needs and interests cannot be over emphasised. This is what the women hoped for when they continued to hold on to the Proportional Representation (PR) as the "better option"²¹. Women believed that this would promote development of more healthy political parties, that would move away from the focus on the individual who, we mistakenly believed would make it possible for the rest of us to "eat". We would, as a nation, focus on the governing and nurturing of our national philosophy and policies and deliver services to the people. We believed, and still do, that PR would help us develop political institutions that would ensure that we celebrate our diversity, we identify issues that bind us together as a nation and for which we would elect a government that would give meaning to our national anthem's "*Justice be our shield and defender....*" where we " *dwell in unity, peace and liberty*" and plenty would be "*found within our borders*" – and even outside our borders. We want Somalia, Uganda, Ethiopia, Sudan, indeed, the whole of Africa, to have plenty within their borders! Africa to be a continent that can feed its people, protect its people, have institutions that would promote peace, security and the well being of its people. Women want to promote creation of better, more inclusive, political institutions so that we move towards transformative institutions.

In May 2009, I had a discussion with Hon. Paul Muite, the then MP for Kikuyu constituency and a very good friend of mine. He told me that I needed to read the South African Constitution because that was the route Kenya should have been aiming at taking in matters of electoral processes. I said to Hon. Muite,

"But women have tried since 1999 to sell this system to the politicians to no avail. It is now ten years and women have been singing PR."

²¹ Adapted from Safaricom Corporation's slogan. Safaricom was the leading mobile service providers in Kenya (2012). Others were Airtel Kenya, Orange Kenya and Yu.

Hon. Muite, who has a good sense of humour said to me, “But Wanjiku, when will you ever learn? You have forgotten that *kĩa mũndũ mũka gĩtikagio kĩaarara*. (a Gĩkũyũ saying roughly translated to mean a woman’s word or advice is only believed after some time or after staying overnight and after subsequent events show her advice should have been taken beforehand, not afterwards?) He went on,

“Maybe now we believe you; so let us sell the PR or at least Mixed Member Proportional Representation (MMPR).”

I said, “Fine.”

I have often shared my thoughts with Hon. Muite, a much focused politician, always ready to share his thoughts on politics. There were many times when he told me that things would not go as planned or as women hoped, and he turned out to be right. This time round, I hoped that he would be right; that time had come for Kenya to adopt a more people friendly electoral system.

Women wanted to move away from “first-past-the-post” system which was not a good system because it excluded them, other marginalised groups and minority communities too. Women thought of improving our political system through using Mixed Member Proportional Representation (MMPR) reflected in the CKRC Draft 2002 and the proposals for creating the fifty seats for women in 2006 Draft Bill that did not take off in parliament. In both cases, we argued that party lists could be used to bring in women and marginalised groups into political leadership. South Africa and other countries had done it.

In the case of the PR system, we argued that every vote counted. Vote turn out would be usually higher than in the majoritarian system or “winner take it all” system. We argued that the PR system, multi-member constituencies and party lists were more conducive to higher levels of women’s representation; that women were more likely to find their place in leadership than with the traditional majoritarian system.

For close to fifteen years, we had discussed it. It had been, like Affirmative Action, a unifying factor for women. We decided to walk that path until we ensured Kenya had an electoral process that was inclusive, democratic and unifying. Women argued that there was need to adopt and promote the concept of democracy and universal suffrage in the political arena. They lobbied for a redefinition and expansion of understanding of the democratic process to ensure inclusivity and greater representation. They addressed all forms of exclusivity. They argued that, in nominating the women, parliament could use either nomination through party lists after the elections, which could be done through either the College of National Executive Councils of political parties, through women wings or congresses.

The women, however, preferred representation through party lists before elections. This meant that before the elections, each party would have a list of

names that they would nominate to the National Assembly or Devolved Assemblies. The list would be in the order of priority and after the election, those seats would be distributed according to the party strength. It also meant that the names would be gazetted before the elections and the electoral commission would just gazette the list of nominees. Women also often proposed that the list would be prepared by the college of NEC in collaboration with the women congress/league/wing of each party in order to ensure the criterion was met. Consideration would be given to regional representation, ethnic minorities and other categories.

It was the view of women that this would make women whose names appeared on the list, mobilise support and campaign for the party, therefore, getting very involved in the political process. By so doing, women would then bring an added value to political parties by marketing the parties beyond ethnicity and constituency boundaries. This would expand space for democracy and enhance political parties as structures of governance.

The benefits of party lists and PR through party lists was explained to members of parliament and leaders of political parties emphasising that the processes was good for political parties because it would encourage all parties to aim at achieving an agreed upon threshold of votes, guaranteeing that women and minorities would easily be represented and have a level playing field. Women even argued that this electoral system was good for promoting party ownership, socializing women with the party in order to play active role in the electoral campaign. However, all these arguments fell on deaf ears. Most political party leaders and many members of parliament were not interested.

Arguments such as using proportional representation, party lists, colleges, as well as direct elections to improve our electoral process, make our political party more inclusive and diverse and have a better reflection of our society, did not seem to change their mind.

All, however, was not in vain. The following provisions show some progress:

In the chapter on Representation of the People under Allocation of party list seats, article 90 (1) notes:

- Elections for the seats in parliament provided for under Article 97 (1) (c) and 98 (1) b, c and d,
- and for the Members of the County Assemblies under 177 (1) (b) and (c) shall be on the basis of party lists.
- Article 177(1) on County Assembly indicates that article 1(b) the number of special seat members necessary to ensure no more than two-thirds of the membership of the assembly are of the same gender will be (2) nominated by political parties in proportions to the seats received in that county as per (article 90)

We note that Article 97 (1) (c) refers the 12 members nominated by political parties to Membership of the National Assembly; 98 (1) (b), (c) and (d) refers to Membership of the Senate; while 117 (1) (b) and (c) refers to membership of the County Assemblies. The struggle for a more friendly political systems continues.

Working with political parties

In 1996, women's organisations, led by the CCGD, recognised political parties as strategic partners in their struggle for political participation. This was in relation to recruitment and participation at various political party structures including the National Executive Councils, nominations for candidates during elections and even in party management. During the 1996-1997 efforts to work with political parties, Fredrich Ebert Foundation was very supportive. At the time, two critical women's programme officers, namely: Jacinta Makokha and Wanjiku Mbugua worked closely with women's organisations.

Women worked with major political parties including:

- Democratic Party of Kenya (DP);
- Ford Kenya;
- Kenya African National Union (KANU);
- Social Democratic Party (SDP);
- Safina;
- Liberal Democratic Party (LDP).

Political parties, mainly in the opposition, were very receptive to women's concerns. We insisted on the implementation of one third women's representation in all structures of the parties. We reviewed their party manifestos for gender sensitivity and presented the results at a political party meeting in Pan Afric Hotel. At this stage, parties such as LDP, DP, Ford Kenya, Safina and SDP promised to implement women's recommendations. In 1997, we actually audited DP grassroots elections for the party's implementation of the Affirmative Action for women's representation at their structures. The then Chair of DP, Hon. Mwai Kibaki, committed himself to ensuring that DP would ensure Affirmative Action for women's representation at all levels of the party structures. At an earlier meeting in Ngong Hills Hotel the same year, Hon. Kibaki had expressed his interest in this agenda, arguing that Affirmative Action was the right way to go. It was not surprising then that in his tenure as president, Affirmative Action was translated into reality through his Presidential Directive in civil service and in other areas. The leader of LDP at the time, Hon. Raila Odinga, supported this process strongly and as shown in Part I, the two leaders often walked with the women.

In principle, working with political parties became one of the strategies towards enhancing women's participation in political leadership for a number

of organisations including: CCGD, Women's Political Alliance of Kenya (WPAK), Women Political Caucus (WPC), Education Centre for Women in Democracy (ECWD), The League, among others. It was a departure from focusing on women and educating them to ensure that institutions of governance and democracy would open up space for them and recognise that women in political parties would bring new values and perspectives to the parties. This was an important strategic choice that women made.

The struggle against gender based violence

While Kenya women's organisations were joined at the hip by Affirmative Action, there were those organisations that closely focused on gender based violence for almost twenty years. This was another struggle that united women. At one time, women mobilised and formed the group "Mothers in Action" in the early 1990s after the St. Kizito tragedy where boys from a school in Meru invaded a neighbour girls school and raped them: 19 girls died. "Mothers in Action" group, though short-lived, was able to create awareness on issues of gender based violence. Ms Njoki Wainaina, the then Director of African Women Communication and Development Network (FEMNET), was at the forefront of this programme. Later, those organisations which focused on gender based violence came together under the Coalition on Violence Against Women (COVAW). Many women, including Hon. Adelina Mwau, Ms Atsango Chesoni, Ms Anne Gathumbi, Hon. Millie Odhiambo, and Ms Faith Kasiva, among others, were at the forefront of this. The International Federation of Women Lawyers (FIDA) under the leadership of Mrs Martha Koome, Hon. Martha Karua, Ms Jane Kiragu, Ms Jean Kamau, Ms Jane Onyango, Ms Nancy Baraza and Ms Patricia Nyaundi, were at the forefront.

Efforts to bring to parliament a *Family Protection Bill* had been made more than ten years earlier but bore no fruits. Some of these efforts gave birth to the now famous Hon. Njoki Ndung'u's *Sexual Offences Act* which was a milestone in the struggle against gender-based violence. This was another area that had united women all along. The FIDA and COVAW spearheaded the struggle while the Caucus for Women Leadership, WPAK, League of Women Voters, CCGD, Maendeleo ya Wanawake (MYWO), among other networks, spearheaded the Affirmative Action programme. Appreciation goes to all these women's organisations. We also appreciate them for keeping alive the spirit of 16 days of violence against women to remind Kenyans that women's bodies are the temples of God—they must never be violated.

The new constitution presents very progressive provisions in the Bill of Rights that protects and enhances women's position at the family level and in society, as well as individuals and outlaws any form of gender-based violence or any form of discrimination against women. Some critical provisions include Article 26 Sub Article (3) and Sub Article (4) which protects the life of a pregnant

mother and which was contested by the Church leaders in the 2010 referendum. This clearly supports the view that while abortion is NOT allowed in the constitution, the caution to accept abortion when the mother's life is in danger endorses the right to life of the pregnant woman including the right to equal opportunities in political, economic, cultural and social activities. Article 27 (3) recognises that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. Article 27 (4) states, "The state shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, conscience, belief, culture, dress, language or birth." Article 45 (3) states, 'Parties to marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage'.

Article 53 (1) states, "Every child has the right:

- to a name and nationality from birth;
- to free and compulsory basic education;
- to basic nutrition, shelter and health care;
- to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour;
- to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not;"

These are only a few of the rights that take women's interests and views into consideration.

I have gone into details on the issues of rights for women because, in their view, women identified violence at family level, cultural violence, issues related to wife beating, inheritance of property, sexual harassment and rape, as areas where they needed to be protected. It is noted too that during "the women only" sessions, the issue of violence at family level and community level was prevalent; women articulated these issues very clearly.

Lessons learnt from women's movement and the review process

History shows that women, being the underdogs in society, have always organised together in groups to deal with their needs, both practical and strategic. In the presentations reflected in Part II, we notice that there were many women's groups that presented the views of women. Women came together during the review process and moved together throughout the process; but we cannot ignore the fact that women also belong to ethnic communities, and at times when these conflicts come, they are caught up in the same web as everyone else.

However Women's Movement made critical choices that moved their agenda forward. The movement has tried to define the type of electoral system that we should have and the reasons for devolving power to the people, among other decisions. The need for transformative, more inclusive electoral processes was been identified as critical. Women at the grassroots level have also moved in designing their own structures, *strategies* and their own philosophy. At the beginning of this story, we talked about grassroots Women's Movement and their efforts to mobilise and manage their institutions. We need to reflect on these movements, these initiatives and look at women's experiences and ensure that their experiences are used to transform our societies, our political, economic, religious and cultural institutions.

Experiences have shown that Kenyan women have created structures that have been very useful for women in this struggle. The coordination around Mothers in Action, the creation of Women's Political Caucus (1997), Women's Political Alliance (2000), Coalition on Violence Against Women (COVAW) 1998, the constituting of the Committee on Affirmative Action in (1999), constituting of the National Women Negotiating Team (2007), the creation of the Women Lobby Team (1999/2000), creation of Women's Organisations Coordinating Committee for protecting women's gains (2009/2010), G10 group formation (2009), Caucus for Women's Leadership Regional Assemblies, even Warembona 'Yes' (2010) is heart and mind warming. Also the creation of Women Mobilisation Networks by the Collaborative Centre for Gender and Development (1999) show that women can create structures that hold them together and move their agenda forward. We need to acknowledge these structures and build on them and see how they can continue to serve women, for as Adrienne Rich (1985:186) wrote:

“Only when the centre of gravity is shifted will women really be free to learn, to teach, to share knowledge, to explore, to scrutinise and to convert knowledge to power.”

Women have learnt many things during the last twenty years of the struggle. They have learnt to speak, share with each other, explore different strategies, and to scrutinise their initiatives. We need to clarify our ideology, and philosophy, distil the knowledge gained from our experiences and form flexible inclusive structures that we have been creating at the national and grassroots levels; then we need to translate this knowledge into power. One can easily argue that these structures we have been creating are inclusive, horizontal, and dependant on individual commitment: they have represented different skills, have considered age and experience, are multi-ethnic, are across political parties and respect different expertise. It is to our credit that we have come together at crucial moments, even without resources, and have coordinated ourselves to push an issue we were passionate about.

Women have risen to the occasion many times and kept the Women's Movement together. We can and should continue action and reflection and come up with strategies that keep us together at critical moments. In the wake of the debate on the Harmonised Draft, donors, under the false argument that Women's Movement was in tatters, decided to fund male based and male headed NGOs. This did not stop women from coming together and mobilising to safeguard their gains. Federation of Women Lawyers, Women's Political Alliance-K, and Caucus for Women Leadership, among others, mobilised the women again with very little financial support.

When we think about how women struggled in *negotiating the double covenant*, we must recognise pathfinders and those who walked with them sometimes under great difficulties. As we climb up the mountain and as we lift each other on our way up, we need to stop and look back at the journey we have made without losing focus and remember that, in the first place, we aimed at the peak of the mountain. We also need to look back at those falling behind and help them climb up with us. We need to continue assessing and re-assessing our experiences, and learn from these experiences at all levels of our society in order to influence the centre of gravity and make it shift. We are concerned with exploring values and other required skills in order to listen to and appreciate our worldview.

We must continue to nurture the structures we create, ensure they harness our experiences and extract the knowledge generated from these structures and experiences and bring them to bear on public knowledge and public policy. Those factors that are unifying, such as women's representation through Affirmative Action, improved electoral systems, struggle against gender based violence in all its various manifestations, institutional frameworks for women networking and collective bargaining and the mobilising structure, must be watered, nurtured and celebrated. Our knowledge about decision making, political leadership and development emanates from our experiences and are unique. The skills we have developed as women, skills of sharing, listening, reflecting and emotional commitment to the development of a better social order need to be harnessed for positive action, for social engineering and for greater wellbeing of women and all other members of our community.

However, let us not forget that even within these struggles for power, women expressed the feminist behaviour as the alternative to patriarchal behaviour. They constantly looked for options of least resistance. For women, the male aggression, male struggle for raw power is not what they bargained for. If we look at history, dominating violent leaders have been labelled great men. These include Alexander the Great, Julius Caesar, Napoleon and Stalin. Others such as Jesus Christ, Martin Luther King, Mahatma Gandhi, Nelson Mandela and Julius Nyerere, among others who offer love and peace, are considered empowering leaders.

We continue to learn from the way women organise themselves to transform the world around them. Promoting equitable distribution of what they have is something we need to capture. Women groups promote the spirit of sharing, respect, understanding and appreciation, freedom, justice and love. That is why they will think about the elderly whose support mechanisms may no longer be there. That is why they will think about taking turns to borrow what they put together every month or every weekly and repay the money so that the next person can borrow. These activities and *strategies* need to be scaled up for. As Andre Lorde (1984:126) notes,

“The master’s tools will never dismantle the master’s house... The true focus of revolutionary change is never merely the oppressive situations which we seek to escape, but that piece of the oppressed which is planted deep within each of us and which knows only the oppressors’ tactics, the oppressor’s relationship.”

New tools are needed in order to transform our societies. Women have a lot to offer in this area. History and Oral Literature show that there exists the story of women’s resistance that keeps on being ignored and buried. We have to find our past in order to deal with the present and celebrate the river of resistance. Margaret Ogola in *The River and the Source* locates the women’s struggle for liberation in the context of the struggle for justice. We must recognise that Women’s Movement will at times rise to the occasion, and like the river during the rainy season, it will be very forceful. At other times, it will break into tributaries and continue to move slowly finding its level. There will also be those times when it will disappear underground as Margaret Ogola says, but it will always be moving. When the time is ripe, it will appear again on the surface and continue its journey more visibly.

The story of the women’s group movement in this country is a unique case and we need to appreciate it. By organizing themselves to buy land and other properties, by coming up with structures of governance where another woman becomes a guarantor, a kind of “title deed,” the women have created parallel governance structures informed by their own values and philosophy. These are poor women. Some of them have never gone to formal schools. Yet, by the time of going to press, this movement was celebrating 50+ years. Those who started it in the mid sixties were now in their eighties and nineties. Many have passed on but the movement continues to grow. Their female children have taken over from them—these female children seem to have pledged their loyalty to Mother Earth and to life too. The struggle to create alternative structures and alternative ideology and new cultures, new communities is on.

After this harvest, we must continue the journey towards a better social economic order.



Emerging from the Shadows

Introduction

This story of women and their struggle to ensure a new constitutional dispensation has been a long and tedious one. We pause and reflect.

In her book, *The Feminine Mystique* (1963) Betty Friedan notes that women often have difficulties trying to describe or explain what is wrong in their lives, that is, naming the problem. She adds that there is no particular label to name this problem in the public knowledge provided by men, who have been the sources of public knowledge on women. This is something women of Kenya are familiar with. If we want to know what women think, what their experiences with the world are, we have to look for new methods, for new ways of understanding their experiences. Friedan states:

“When a woman tries to put a problem into words, she merely describes the daily life she leads.” p.21

This is exactly what the majority of the Kenyan women were doing during the constituency hearings. In many cases, they told their own stories, their struggles of daily lives, their struggles to feed and clothe their children. They would start their presentation like this:-

“Me, this is what I want to say: we have many problems in this area. Food is difficult to get. We have no water, our children have no clothes, they are not going to school, and we have no school fees. Like me, I have five children; I just work on land and if it rains, we get food; if it does not rain, we don’t get food. This mountain here, you can see it, it keeps away the rain. Women need to be assisted.” (CKRC interviews)

Women, as I have shown in Part II of this book, could even tell one story together as if they had rehearsed it. One would start the story, another would pick it up and a third would continue and complete it. The story of their daily lives is very similar.

I have found out the same thing happens even with elite women. In 2009, I sat with Dr. Achola Pala, a woman whom I had not met for years. I was with my colleagues Prof. Milcah Amolo Achola and Prof. Ciarunji Chesaina. My

colleagues had not met Prof. Achola Pala for years too. The talk at the Norfolk Hotel took three hours. We did not discuss the intended agenda which was establishing the *African Women Studies Centre*. The title of the proposed Centre created an opportunity for us to share our innermost thoughts, experiences within marriage, with children, with patriarchal institutions, with the struggle, the many failed starts, and the space in academic institutions. We told the story together as if we had been together everyday for the last ten years. As we discussed, we raised issues of identity, of culture, of tradition, of the inner struggles and of the Women's Movement. We concluded that we needed our own space where we can tell our own narrative, where we can reflect on how ethnic identities, other identities and other issues can be shared.

Naming the problems of women

W.E.B Du Bois (1904) in his *Souls of Black Folk* referring to the problems of the black people in America says;

“Between me and the other world, there is ever an unasked question: unasked by some through feelings of delicacy; by others through the difficulty of rightly framing it. All, nevertheless, flutters around it. They approach me in a half-resistant sort of way, eye me curiously or compassionately, and then instead of saying, ‘How does it feel to be a problem?’ They say, I know an excellent coloured man in my town’; ‘or I fought at mechanics Ville’; or ‘do not these southern outrages make your blood boil’?” (p. 213).

This sounds very familiar to me and I am sure to many women. We have had to explain ourselves to a world that does not seem to understand us. I think of many replicable incidences of what Du Bois is saying in this essay. In some cases, men are afraid or are not sure what to ask you when you keep talking about the world of women. They look at you and are not sure what to tell you. They think it is a delicate question. They do not want to ask you how it feels to be a problem in society. Why you talk about being marginalised all the time. They wonder what your problem is and you live in a world where democracy is the norm. If you look at their faces, you can tell that they sympathise with you but are not sure what the problem is. They want to ask you how it feels to be a woman, but they are not sure how you will receive the question. So they tell you;

“I know a woman in my village who is a very good leader. She is married, has children and has clear leadership qualities. She is a mother to all around her and even the elders listen to her. You should get her involved in your organisations or groups.”

You don't even try to ask why you are told she is married and has children. You understand the message although you are not sure whether both of you are reading from the same script. According to them, she is good because she is

married and has children. In the view of men, the competent women are few and far apart. So, this woman, who is married, a mother and whom leaders listen to is competent to work for women's organisations.

I am not sure the gentlemen in question know what women's organisations do and what expertise they need or what skills they need? Another more confident gentleman will ask you:

"You have no idea how much I have done for you women. I was the only one who could raise the issue at the meeting. Nobody wanted to hear about women at that meeting."

You get the message. This gentleman is on your side. He will defend the women's issues at the meeting. He speaks up and wants you to know it is very difficult to speak up for women. So you need to do something about it. He then advises you to lobby more, take time because this issue is very difficult and women have to do something about it. Does he believe that women's issues are important? Maybe not because, he continues, "...in that house, (Parliament) don't be cheated, your gender is not being supported." I say, "thank you for the support," and then promise to consult more with this particular friend and to lobby others for their support.

As a woman, you knock at the doors that have been closed to you; you speak in a language that men do not understand. They have defined democracy, 'one man, one vote'. They have defined electoral process, "The first past the post." They have defined constitution, "Principles that guide..." and then a woman comes along telling her stories thinking it is a constitutional matter! You are reminded that a constitution is about principles, not long stories about daily lives. You do not ask the question how come these principles have not ensured that women's strategic needs and interests have been addressed. You have asked this before many times and like grandma in the poem at the beginning of this story observed, "you have asked those who have ears but do not hear."

In his essay, *Of our Spiritual Strivings*, Du Bois (1903) observes that it is like looking at the world through other people's eyes or through a veil. You, as a woman, are an "outsider". You are also "Invisible", like Ralph Ellison's (1947) "invisible man". Sometimes, others look at you with sad eyes and wonder how they can help you. In their hearts, they can't figure out why you are not happy.

How does it feel to be a problem?

At various times when women were negotiating for their space in the constitution making process, the issue of them being a problem was among the key issues they had to deal with. Yet there were people who sympathised, to a certain extent, with the women but they had no idea what was going on in the women's souls. There were those who were direct and who raised issues such as:

- Why do women want to be favoured? Why can't they compete with everybody else? The field is open for them?
- Democracy is about competition?
- Those women in parliament contested with men and won. Why do they want Affirmative Action?
- Women always want things on a silver platter? They want things made easy for them?
- This "one-third thing?" What are they coming to do in parliament?
- Do they not know we are representing everybody in the constituency? Whom will they be representing? What is their constituency?
- What value are they going to add to parliament? What is special about women?
- They are the majority in the nation. In fact, they are more than 52 per cent so why can't they elect one of their own?
- Why can't they focus on the bigger picture?

Many women have heard those questions directed at them many times. Often, they have responded in a spirited manner, getting statistics, quoting other sources, producing comparative studies, answering every question. That is the reason this book is a testimony to how vigorously women have tried to address all these questions through research, development of materials for lobbying, and how the debate on abortion by church leaders and others was about the woman's body and how to protect what grows within her; but not about the woman herself. They had a problem with the clause that states that a medical practitioner can facilitate abortion if a mother's life is in danger. What to women was obvious, did not seem obvious to religious leaders. The contention that all women, if given a chance, would make abortion a regular activity was incomprehensible to women. The arguments gave the impression that women were waiting for abortion to be made legal to run to any doctor and abort regularly. Sometimes, as in the case of the debate on abortion, the male perspective on the issues was so strange that many women were dumbfounded. Some leaders were asking the women, "Why are you not saying anything on abortion?"

Sometimes you, the woman, get tired of explaining what the problem is. We have talked ourselves hoarse, explaining the problem: how *culture, traditions, stereotyping, economic status, women status, and the nature of institutions affect women positions in leadership*. We have explained ourselves hoarse but they just don't get it. That is why grandma in the poem that opens the story of this book says, "we are sick and tired."

Every day, you start the same song until the song becomes stale and you are left with a bad taste in the mouth. Women are outsiders in their own cultures and communities. They have lived in the shadows for too long. They have been looking at a world to which they are invisible and often incomprehensible. This book and many others on women in this country and globally is a testimony

that women are emerging from the shadows. They are breaking through the veil and insisting on being visible in all aspect of life.

Sometimes as I reflect on women's struggles, I think of Clarissa Pinkola (1992) in her book *Women Who Run Away With The Wolves: Myths, Stories of The Wild Women Archetype*, who says;

“When women hear the words ‘wild’ and ‘woman’, an old, old memory is stirred and brought back to life. The memory is absolute and undeniable, and irrevocable kinship with the wild feminine, a relationship which may have become ghostly from neglect, buried by over domestication, outlawed by the surrounding culture, or no longer understood any more. We may have forgotten her name, we may not answer when she calls out, but in our bones, we know her, we yearn towards her, we know she belongs to us and we to her. This is our essence.” (p.7)

Clarissa says that women often come into contact with this essence. For some, this taste of the wild comes during pregnancy when they feel the power of pregnancy, the power of carrying another life within them. That is why many women did not zealously contribute to the debate on abortion and the relevant articles on abortion because for most of them, carrying a life within them is joyous, it is a blessing. The church leaders were arguing as if the constitution allowed abortion and hence enabling women to run quickly to get pregnant and then abort! They have no idea what women's thoughts and feelings are. When women sleep, wake up and walk, as they feel the baby kick and play within them, what a great joy? They feel that flow of joy within themselves brought by the life that is growing within them, the life that they nurture, protect and cherish – pain and sorrow at times not withstanding – and when that bundle of joy comes into this world, their happiness is complete.

As the debate on “when life begins” went on during the constitutional review process, I used to look at the male church leaders, male doctors and politicians arguing vehemently about it and would wish that they could experience the feel of the baby playing inside them, and the baby's growth reflected in their protruding stomach. When they argued that life begins at birth, I would ask myself, “Why don't they ask the women? Women know.”

Clarissa reminds us that when we are nursing our young, and the little one looks at our eyes, touches our nose, see the baby's toes all lined up like a row of maize on a cob, touching them, oiling them, removing the dirt between toes, when we hear music, through the drum, the whistle, the cry, a poem or a story, it causes us to remember, even for an instant, what substance we are made of and where our true home is. Ironically, we have lived outside this home either at the place of birth where we are *temporary*, or at the house of marriage where we are *outsiders*. Our job is to “enlarge the clan” as the Zairean proverb says. Fortunately, this is changing as we continue to take our

place in the line of duty with those who have fought for women's liberation and continue to water the seeds of liberation.

Reflecting on Clarissa's observations makes me think about Wairimu, my step-mother, my father's third wife, a woman full of vitality. It is surprising that not even the struggle during the Mau Mau war of independence could kill her spirit. Even though my father was detained for seven years, her spirit never died. Strange too, is that, she never developed bitterness against those in the village who were home guards—the loyalists. Those who took sides with the colonialists and betrayed their people. She refused to reject her true self; she is one of Clarissa's women "who ran away with the wolves." "Kamendi" is her nickname. She was 83 years by the time of going to press. But Kamendi has always expressed herself freely and has a great sense of humour. She used to stand tall but at 83 years, she has weakened, bent but full of confidence in spite of poverty and her participation in the Mau Mau war of liberation. Wairimu calls herself "Mwarĩ wa Kanyĩrĩ" (daughter of Kanyĩrĩ). Kanyĩrĩ was her father. Like many Gĩkũyũ women, she never used her husband's name, my father's name, but adapted her father's name. When she talked to me, she would call me "Mwarĩ wa Wango" (daughter of Wango). Wango was the man to whom my grandmother was given when she was a little girl in exchange for food to her Masaai family during the Great Famine, the "Famine from abroad", as it was called. I am named after her as per the Gĩkũyũ tradition, where the first girl is named after her father's mother.

I also think of a Masaai woman, Namaisa Salempo, who I interviewed in 1986 in Nairegia-Nkare. This woman was also very beautiful. She told me her story with a smile on her face and a glitter in her eyes that was hidden by a white lace brought by cataracts. She was blind so she made me assure her that there was no man around as she narrated the story of her love life. She too was a woman "who ran away with the wolves and found her kindred spirits."

Salempo was about 80 years old when she narrated the story of her life to me; how she used to sneak out and go to sleep with morans and her husband would never know. She narrated her life exploits and the different lovers she had. She reflected on how men competed over her and how morans fought to get her. She finally concluded that if she could go back to those youthful days, she would do exactly the same.

Salempo: You see me?

Wanjiku: Yes, I see you.

Salempo: Do you see how brown I am? Look at me closely. Look at my arms, look at my legs. You see how brown I am?

Wanjiku: I can see. You are very brown and very beautiful.

Salempo: You should have seen me when I was young. I was as straight as a tree and used to walk like a giraffe. Any man who saw me desired me.

When I put on my ornaments, no man could take his eyes off me. Hey! Was I not beautiful? Old age is bad that I am the one sitting here today and have not even moved to the gate.

Hey! Wanjiku, did you say your name is Wanjiku? I was as beautiful as the moon. When I got married, my husband thought he had contained me now that I was his wife and that only those of his age could come and sleep in my hut with his knowledge. But you see, what did you say your name was?

Wanjiku: Wanjiku.

Salempo: The son of Kareso did not know who I was. He could not contain me so easily. The morans could not resist this beautiful girl. I was irresistible. If they did not come, I would just sneak out at night and look for one of them and we could go to the bush. But nobody knew. I shared a little with one of my friends. Poor girl, she is now dead but she used to do the same.

Wanjiku: Were you not afraid of the animals?

Salempo: What animals? Wanjiku, the lions and other animals do not come near the homes and if they do, you know they are there. Like leopards, you don't run away from them. You talk to them and show them you are a friend. When you are not afraid, animals do not attack you. The morans used to compete for me and it made me feel very happy. I also did not hide when my husband's age mate came and put a spear outside my home. Those whom I did not want, I just told them so and told them to sleep and not touch me.

Wanjiku: Your husband never found out?

Salempo: He used to think that I was in my hut all the time waiting for him, poor fool. He had many wives and we as women knew from his behaviour where he intended to spend the night. I always knew when he would spend the night in my hut and I stayed put.

Salempo reflects thoughts of many women who can tell you the story of their love lives, their lives in the shadows of tradition if you become very close to them. You can see the joy in their eyes, the smile on their faces, and the song in their hearts when they let themselves go.

But we also know that women live a life of disconnect. Very often, they look tired, fatigued, depressed, confused and are unable to express their desires, to explore what is in their hearts, to express love, joy and contentment. Some women will not buy anything for themselves in order to save for the family, will not eat ice cream or drink wine. They must not be seen to indulge in good things. The basic nature of women – their natural psyche – has been held hostage; their soul has not been allowed to emerge from the shadows, to come to the open, to roam the universe in freedom. Many of them will identify with

Laura Good Wilson (1992:722) in her poem, "*I am becoming my mother*" presented below:

I am becoming my Mother
Yellow /brown woman
fingers smelling onions.

My mother raises rare blooms
and waters them with tea
her birth waters sang rivers
my mother is now me.

My mother has a linen dress
the colour of the sky
and stored lace and damask
table cloths to pull shame out of her eyes.

I am becoming my mother
Brown/yellow woman
Fingers smelling always of onions.

Earlier on in this book when discussing women's voices, I referred to Akinyi, the 24 year old young woman who considers herself an old woman. Married with three children and in a polygamous home, she has now turned into her mother. The cycle of a woman's life continues. Her dreams are now transferred to her children. Her ambitions, except those of looking after the children, are over. She lives in the shadows, her dreams no longer real and her hopes and aspirations transferred to her children.

Clarissa (1992:13) in her book again notes:

"...a healthy woman is the incubator. She is intuition, she is a far-seer, she is a deep listener ... she is fluent in the language of dreams, passion and poetry ... she is ideas, feelings, urges and memory."

That is, she is not timid. She is the woman whose emotions flow, who is surrounded with not only emotions of sadness but with love emotions. She is much like my step-mother Wairimu, and the Masaai woman, Namaisa Salempo. The native woman is a woman who carries stories and dreams, words and songs, signs and symbols. "She is both vehicle and destination." She wants to walk out at night and see the moon, the stars, the sun, to sing and create poetry, songs and dance. She is a female soul, she is intuition, she is foreseer, she is a deep listener, and she has a loyal heart.

"She whispers from night dreams and memory. She has been lost and half forgotten for a long time. She is the source, the light, the night, the dark and the daybreak." (p13).

This quotation describes women like my stepmother Wairimu and Salempo. Women who in their hearts and souls are full of life, have desires that have

been locked up in their bodies by culture and tradition, by a patriarchal structure, ideology and philosophy; women who will express themselves when space is created for them or create for themselves; women who, like Betty Bayo, a Kenyan Gospel singer at the age of 20, in 2009 sung the song “*Eleventh Hour*” as if she had experiences of a sixty year old woman. At the eleventh hour when you have lost hope, God knocks at your door. Women never give up.

It is this essence of “a woman that ran away with the wolf” that emerges when young girls meet men young or old and their poetic nature, their passion and love consumes them and like the Akinyi we saw earlier already old at 24 year, get into relationships which are short lived. Culture, tradition and patriarchal myths conspire to destroy their true selves even before they have time to grow. They are driven to the shadows. Marriage becomes the end of the story. Often in the marriage, women stop seeing the stars in the sky, hearing the birds sing and stop walking like the gazelle, like Akoko, the daughter of Chief Odero Gogni of the Yimbo clan (Margaret Ogola, 1994).

During the review process, particularly during the women-specific sessions, we looked at the women whose great expectations of a better social order was in the offing. We noted that in all these women, you could feel the essence, the ideas, and desire to be free to sing, to laugh, to break the chains. It is clear that the free woman has been buried by tradition and is struggling to come out of the shadows and into the world, to be heard, to sing and to move the world with her intuition, her love, her dreams, her song and dance. Kenyan women demonstrated this by giving their views during the review process. The voices of the Kenyan women are a clear testimony that women are moving from the shadows. That is why this new constitution breaths the spirit of women, of youths, of minorities, of the marginalised. It has ignored the usual lawyer tradition of having a short document in order to accommodate people’s views. Women and other groups had said “NO, – our wishes must be reflected too.”

Women’s resistance here and elsewhere follows in the tradition of Harriet Tubman of USA, Mekatilili wa Menza of Kenya, Mariama Ba of Senegal, Wangari Maathai of Kenya, and many other great daughters of this world who have similarly struggled for freedom in one way or another. They are a travelling people and are created in the image of God. They are, as grandma says in her poem at the beginning of this book, “not children of Indemili, the lesser God of the Ibo people of Nigeria.”

The people of the family of Kizi, the daughter of Kunta Kinte in Alex Hailey’s *Roots* (1976) still roams. The people of Kunta Kinte of the Mandika people and many others from Africa still continues the spirit of Kizi, the mother of Chicken George, great great grand mother of Michelle Obama, the wife of the first black president of the United States of America (USA).

The spirit of Toni Morisson, Angela Davis, Sojourner Truth, Alice Walker, Maya Angelou and all those great men and women in the African Diaspora lives on. The spirit of those who have struggled for liberation, liberation of the black race, liberation of women, liberation of all those who live under oppression in the land of the poet Laureate of Madison, Fabu Mogaka, whose link with her people, the African people, is reflected in her collection of poetry under the title “*In My Own Tongue*” (Fabu, 2011). Like Cokarine and prophetess Moraa, Fabu has continued to be in the line of duty like many African women, watering the seeds of liberation. “We are a travelling people, a wondering people, the people of God; so every day, we are on our way,” as I learnt from a Catholic nun by the name Mother Fidelis Shiel, a woman of God; a wonderful woman who has now gone to God. That is what it has meant for many women in this country and in Africa. They have continued to travel, sometimes wandering, but always towards their goal.

Akinyi, the 24 year old woman we met earlier in the book is a living testimony to an acknowledged fact that poverty, oppression and tradition, among other ills, kill the spirit of a woman and isolates her from her true self. That woman in her, the woman who could walk with a song in her heart and glitter in her eyes, that vibrant kindred spirit, disappears. This is the woman who, in African Oral Tradition, makes a decision to marry a hawk for example, “Nyanjiru and the Hawk,” in Wanjira’s story in *Reclaiming my Dreams* and just say the “hawk is my choice” (Kabira & Waita, 2010:125). It is the woman who as a young girl in the Luhya community resists marriage where she is “treated like a stranger and her people as locusts,” as Joseph Muleka would say.²² It is the spirit of the Kĩrĩro (lament) among the Agĩkũyũ where girls refer to marriage as loss of freedom; the fact that they would no longer be free to be with their age mates. The lament-singing goes as follows:

Oh dear!
 You of Gicui village
 You came to greet Waceera
 She came here. She drowned in the river
 When the river dries up, the singer also dries up.

I do not remember anything
 When you, our children come in and go
 Waceera did you leave that boy and Njeri well?
 And now I the lone child
 You singer when you reach Aceera clan

Greet Kĩgotho my father for me
 I know he did not come
 You greet Njeri

²² Dr. Joseph Muleka’s unpublished thesis on Bukhaya Oral Poetry (2008).

Me, I died alone
You know I will not be able to move freely.

I died alone
Me the lone child of Wangari
You know I am no longer able to move freely
I the daughter of Kĩgotho
Kĩgotho (my father) may God be with you.
(Kabira and Nzioki, 1994, p. 28)

There are many narratives and poems that reflect the women spirit of resistance, even as they live in cultural and historical contexts where patriarchal ideology governs the way they live and interact with themselves, society and even the state. In the review process, women's focus on political participation to inherit land from their parents, to have joint ownership of title deeds by husbands and wives, to outlaw all traditional practices that negate their lives, to outlaw violence and ensure harsh punishment for rapists, for example, is a testimony to their desire to emerge from the shadows. This is the spirit of Mariam Ba (1980) who says in her letter to her very close friend, Aissatou, in *So Long a Letter*:

“My heart rejoices each time a woman emerges from the shadows. I know that the field of our gains is unstable, the retention of conquests difficult.”(p.88).

As shown in this book, many women, are emerging from the shadows. They are taking their place in the line of duty and watering the seeds of liberation so that the woman of vitality resounds in all of them. Even a very restrained and non-assuming woman like the maasai woman, Salempo, whom we described earlier, keeps a secret within her. She may not say it but it is there in her soul, sometimes locked up and properly guarded. Often, however, women are unable to express themselves. They have been trained to contain their emotions, to wear the mask, negate the self. Some of them have done this so well that they no longer recognise their true self. They only need re-awakening and they will discover their beautiful self, their poetic self, their kindred spirit. Every woman knows this but for many, the burden of poverty, of culture and tradition does not allow this to emerge. Many remain preoccupied with basic needs as Akinyi, the 24 years old who is already an old woman, does.

I have told the story of a mother's red dress to my children many times. I first heard this story from Prof. Helen Mwanzi, a woman who, like my step mother Wairimu and Salempo inspires one with her love for song, dance and poetry. She comes from the land of *Mwana wa Mberi* (the first born) a song that has in many ways become the National Anthem for Women's Movement in Kenya.

My mother's red dress is the story of a mother who was bought a red dress by her daughter to wear for special occasions. The mother cried with joy when she

got this dress. She kept it in her wooden box, nicely folded, awaiting that day, a special day when she would wear the dress. The mother, like many African women, like many who appeared before Constitution of Kenya Review Commission (CKRC) to give their views in preparation for the new constitution, was a struggler, one of those who seemed to have sworn loyalty to life and whose only occupation was to work for her children. That occasion for her to wear the red dress arrived when her life had already left her body. She was buried in her red dress. Death came before the mother had an occasion to celebrate.

There are millions of women in this continent who can identify with this story. Clearly, many who came to present their views to the commission were the poor. They have had no occasion to wear their red dress. The women who have been on the line of duty and who are emerging from the shadows would want this story to go to the archives so that when we tell it, we shall begin with this opening formula of oral narratives: “long, long time ago, there was a poor woman...” It is my prayer that in the African continent such red dress stories will no longer exist. Every woman will be able to celebrate, to get in touch with herself, with that kindred spirit because poverty, oppression, disease, corruption and violence will have been put in the archives.

As mentioned in Part I, this is a long journey and for any long journey, you need to bend your back by the roadside and rest. As you rest, you take a moment to reflect on the journey. You energise yourself too. I will now take a moment to reflect on Grandma Naitera who never got a chance to emerge from the shadows. My grandmother’s story is one woman’s story but it represents the lives of many women in Africa and many other parts of the world. The following is her story:

It is now about sixty years since my grandmother Naitera left this world and went to that world where she must have met her maker. I hope He/She has been able to explain to Naitera why this life was hell to her. He/She must explain why Naitera was born a Maasai, in a third world, in a nation under colonial rule, at the time of struggle for liberation of the black people; and most of all, as a woman. If He/She has not explained to her, we need to ask Him/Her to do it.

She was a woman who was born a Maasai, was exchanged for goats and food to the Agĩkũyũ, married to a man with many wives, was buried by a Luo labourer from Uplands Train Station and then went to meet her maker without saying goodbye to her two sons whom the colonial government kept in chains in detention as she struggled to stay alive; at least to say goodbye to her sons before exiting from her life’s path.

Grandma must have been ten years when she was handed over to Wango, the man who got her in exchange for food and goats to save her family. Her son, Njoroge,

who is also my uncle, wept as he told me the story, the story of a ten year old girl, frail from hunger, fair, brown in colour with small searching eyes but with firm feet that gave the impression that she had walked long distances. She had walked long distances in search of water, of pasture for her father's goats, in search of firewood among other chores. She had been booked for marriage to an old man the day she was born and a bangle was put on her wrist to indicate that she belonged to someone. The job of her mother was to bring her up, have her circumcised and make her ready to move to the would be husband to produce more little Maasai boys and girls and expand the clan. But then she, like other Maasai women, must have said this prayer as recorded by Naomi Kipury (1983:207):

My God do not leave me at the mercy of the man,
At his habitually moody whims
He that roams the village
Arriving when loneliness has filled the house
Setting on the walls as well as on the bed
Not at the mercy of a wanderer with unsteady affection
He whose mother had completed all the rituals due to him
He to whom guests come saying
My friend my dear, where will you spend the night?

For Grandma Naitera, destiny had it that she was to end up in another home of a different clan, a different community. She was to be the mother of sons who would later be taken away by colonialists. As for daughters, she only had one who never lived to talk about her mother. She passed on as an infant. Her two brothers, Duncan Mūkabi (Maasai) who is my father, and Njoroge, my uncle, never got over her departure.

Grandma was to be brought up in a different culture, the culture of the Agĩkũyũ. She was the sacrificial lamb for the survival of her clan. For their sake, she was exchanged for maize and beans and some goats. She was separated from her twin sister. She was sacrificed like Jesus "so that her people may live." I don't know whether Grandma prayed to the Maasai God or to the Gĩkũyũ God after her sons were detained by the colonialist. Or was she just blank and in pain, the pains of a mother in a foreign land and with her children taken away by colonial government. How did she deal with this pain? Who consoled her? Did she give up in life? Was she given an explanation by the God of Ibrahim, Isaac and others as to why the Maasai God and the Gĩkũyũ God could not let her see her two sons again when she went to heaven? Did God explain to her why she had to go through so much pain? Why she had to be born a Maasai, in a third world country, colonised by the whites who finally took away her two bundles of joy to detention? Sixty years down the line, even her grandchildren; I being one of them, do not understand why she underwent such pain. Did she have to be born to be exchanged for food? To marry

someone she did not choose? To give birth to a girl who died and then two warriors who would be taken away from her? What is that God like? What does he say was the lesson we were supposed to learn from her life of suffering?

Sometimes, I want to ask Grandma if she had a dream. What could it have been? Was it a dream of returning to her people in Maasai land? Was it a dream of seeing her mother and father again? At the age of ten, what kind of dream did she have? Was the dream deferred? I ask like Langston Hughes. What happens to a dream deferred?

Like many women in cross ethnic/racial marriages, Grandma lived in a foreign land; in an alien land; praying to an alien God. How did she learn to answer to "*Wanjiku wa Mathaai*" or *Mwari wa Wango*" instead of her name Naitera? How did it sound? What did she feel? Was she scared being an alien soul, answering to an alien name? These and many other questions need answers. Although my grandma died in mid 1950's, her story is the story of the many girls forced to early marriages that women told during presentation of views. The story of poverty, of alienation, of the desire to have a better life. The woman in them must have a chance to develop; their *Id* must be released from jail.

I hate to imagine the day my grandma was told she was going to be Mahinda's wife, a man who had six other wives. As a little girl, then about 14 years old, she was going to be the seventh wife. Wango the man who brought her from Maasailand, had looked after her for four years before handing her over to Mahinda. How did she feel? I cannot talk about love! Or should I? Did she love this man? Or she had no idea what love had to do with marriage. She was supposed to come to the homestead, get her piece of land, have her hut and Mahinda would come to her if and when he chose. He must have come to her hut because she became the mother of two warriors. Warriors that she brought up and taught the courage of Maasai warriors, but warriors who wept in old age when they talked about Grandma, their mother, Naitera.

Naitera's son, Njoroge (my uncle), used to say that he could not forgive God for letting his mother die when they were in detention. "That is why I don't go to church. I was not present to even bury my mother when she died. My mother, I was told, was buried by a Luo man. Mother of Ndegwa requested him to help bury my mother. How could God have allowed both of us to be detained and not be there to bury our mother?" He would weep when he remembered this. He wondered why God was in a hurry to take his mother. Could He not have waited until they came from detention?

I need to take a moment and talk to my Grandma.

Dear Grandma, what greater sacrifice could one make than this. You went to a land of farmers, men and women of the hoe, men and women who were cultivators of the land. You left the life of your wandering people; life of movement with your animals; going up the hills when drought came and back to the Valley when the rain came; a life of people who believed that, cattle were created for them; a life of Morans and warriors; a life of bright colours of red, blue, magenta, orange and gold; a life of decorative necklaces, bangles and head laces. Grandma, you left the life of a different rhythm, different songs, different beats, different history and different cultures.

Grandma, you came to a land of strangers; people of different culture for whom meat and milk were luxuries; people of maize and beans, of porridge and arrow-roots, sweet potatoes, cassava, bananas; people of brown colour scheme; people whose customs and traditions were alien to you, whose language was incomprehensible to you. Grandma, you must have spent nights of fear and loneliness. Did you cry at night? Did you dream about your home? Did you feel lost as the people you lived with spoke a different tongue?

The story of Grandma is the story of many women in Africa. Sometimes I want to tell Grandma that she never died. She lives in the memory of her children, grand children, great grand children, and great great grand children. We want her to know that the women of this country continue to struggle not only for their own liberation but for the liberation of all African people. Liberation from oppression, oppressive culture and economic injustice. She should stay in peace and continue to intercede for women while up there. We must not let my Grandma, Fabu Mogaka's Grandma, Harriet Tubman, Alice Walker, Sojourner Truth, Mary Nyanjiru, Mekatilili wa Menza, Maggie Gonna, Rahab Wabici, Mariama Ba, Wanjiru wa Kang'ethe, and all other great women who have passed on be forgotten. The struggle for women liberation and for the liberation of our African nations must continue, a struggle to transform our societies, a struggle to make our society better for men, women and our children, a struggle to make life worth living for all of us. That is what the women who gave their views continue to tell us. They wanted a new constitutional dispensation that would help women emerge from the shadows of traditional and economic, political and social deprivation. We must create a new earth. The stories from Bondo, from Garsen, from Wajir, Mandera, Ijara, from Bomet, from Nyando, from Kilifi, from Nyeri, Nyandarua, West Pokot, Kajiado, Narok, Kuria, and other areas are all but one story told many times. This story must be expressed—the story of women's struggle for a better social order.

My grandma, the mother of two warriors – my father and my uncle – must have taught them about girls and their place in society for they love their daughters. They educated their daughters and even gave them property. My father, her young warrior, whose name is Mukabi – “meaning from the

Maasai” – decided not to take dowry when his many daughters were getting married. He argued that his daughters were priceless. Their price was so high that nobody could afford it. All he needed was for them to be happy and prosper within marriage. He remained a role model for his daughters and sons. The advice he gave to the men who married his daughters was always, “Treat her with respect and let her and your family live in peace and prosperity. If you feel you cannot do this, let her come back home.”

He brought up his daughters encouraging them to break the silence of tradition, to break the barriers and excel; to release their spirit and grow. He told them they had to have dreams and pursue them. In detention, grandma’s son, my father, was known to talk about the dreams of his daughters and sons. For Naitera’s sons, the girls had to be released from a life of insecurity, of timidity, of indecisiveness, to a life of self-confidence, of self-determination, of courage, of commitment to pursue their dreams. It is no wonder then that when he was sick and ready to join his mother in heaven, he kept seeing his mother in his dreams as well as his daughter, Wariara, who had passed on before him. On his death bed, he used to say, “Wariara was here.” Wariara, his daughter, whom he used to call Mũthoniwa (in-law), had passed on eight years earlier, but he kept seeing her in his dreams and in his reflections.

But the story of the sons of Naitera, who educated their daughters and encouraged them to break the yoke of tradition, and who adopted their step sisters, Muthoni wa Willy and Esther wa Wilson (Kabira, 2006) to be their blood knot is also the story of many men in this continent. Naitera’s two sons are men who have responded to the call to lead the way and be companions of women on their journey towards their dreams. Many other men in the continent have led the struggle from the front among them being; Mwalimu Julius Nyerere who set the pace by introducing Affirmative Action of 15 per cent women’s representation in Tanzanian parliament in the eighties. He recognised that the status of women in society, the social-cultural barriers as well as lack of economic power would not provide a fair playing ground. We thank this great Son of Africa. Under the leadership of Mkapa, the 15 per cent went to 20 per cent. Rwanda, the country where tears have flowed until eyes have dried, has also done Africa proud. They have the highest number of women in parliament in the world at 49 per cent. When Nelson Mandela, that great son of Africa, took power in South Africa, Affirmative Action for women’s representation in parliament was implemented. President Mwai Kibaki was not left behind as we have discussed earlier. One can only say: ‘Keep it up sons of Africa and shake up the reluctant ones so that they can follow you and help women emerge from the shadows.’

We women are a travelling race; a wandering race, but we are also “the people of God” as proclaimed by one religious singer. The lyrics of the song state that when women get their basic needs, together with their children, families and

communities, the life within them will explode. They will see the stars, the moon and the sun. They will feel the baby within them and wait in expectation for the birth of a new one whom they have prepared for. They will bring him/her into a peaceful prosperous and friendly world. They will not live in fear of giving birth to another one that they cannot feed. They will celebrate womanhood; breathe the air of confidence; break into song and poetry for they will no longer be the children of Indemili, the lesser God. They will have emerged from the shadows and taken their rightful place at the centre of the universe. This great continent will then be a land of great joy and celebrations, for its people too will have emerged from the shadows. Women all over the continent are marching towards the centre. They are marching towards the centre in order to move this continent forward and create institutional and policy frameworks that take on board the potential and interests of all members of our society. They will move together towards creating a better social, political and economic order for the people of our continent.



Conclusion

“For the great river starts its journey as a little stream which at first meanders around without any apparent direction, sometimes disappearing underground altogether, but always there, always moving towards the sea” (Ogola, M. 1994:71).

The story of Kenyan women on the path towards a new constitutional dispensation has been like the great river referred to by Mrs Margaret Ogola above. The journey has sometimes been fast and steady, at other times, the women’s voice has been faint, underground but always there. This has been their path since 1992 when the focus was to reclaim their space in society. The women of Kenya had, like the old woman in the poem “*Grandma Remembers*,” worked very hard and explained themselves to everyone who was willing to listen and even those not so willing to listen.

Many times, Kenyan women felt the need to influence political institutions in order to operate from the centre, from where decisions are made. We agreed that 33 per cent critical mass was the necessary percentage of women’s representation both for visibility purposes and to have their voices heard effectively. We believed that this percentage would make a difference in all decision making positions in the country’s institutions.

For close to twenty years, we tried to expand the boundaries of democracy and political practice. We tried to negotiate opening up of democratic spaces in the institutions that are exclusive and hierarchical in the way they practice and handle power. We proposed an Affirmative Action policy for political participation many times, but this concept challenged the male view of power and use of the same. We argued that the legitimacy of the current institutions such as those sanctioned by electoral processes and universal suffrage have perpetuated the exclusion of women, and that institutions that lock out fifty percent of the population cannot be called legitimate by any standards.

For close to twenty years, the women of Kenya have challenged both the theory and practice of the so called democracy. The river of resistance to these exclusive political institutions flowed. Sometimes, the river would be in narrow streams and meandering towards the sea as in the case of the post 2005

referendum. Other times, as in the case of the 1992–1997 period, the river would be underground, quiet but moving, but in the 1997–2005 period, the Women’s Movement moved with unparalleled force like a swollen river and made its impact on the nation as is clearly demonstrated in the five constitution drafts, that is, 2002 CKRC Draft; Bomas Draft 2004; Wako/Kilifi Draft 2005 and referendum 2005; CoE’s Harmonised Draft 2009; and the Naivasha Parliamentary Committee 2010 Draft that was taken to the referendum and became the new Constitution of Kenya on August 27th 2010.

Some people claimed that the Women’s Movement had died during the 2005–2009 period but contrary to these obituaries, the movement continued its journey towards its destination, protecting and nurturing what others had planted and ensuring that when the time of harvest came, women would fill their granary.

Women of Kenya have said the centre of gravity would have to shift to enable institutions become more inclusive, more accommodating and more appreciative of views and perspectives of women and other socially excluded groups. This is indeed a season of harvest. Many of these institutions will now be required to open up space for women and other marginalised groups. In 2011, we have witnessed the appointment of twenty eight judges of whom fifty percent were women; even men and women from minority communities and physically challenged persons found their place. Truly, it is *Time for Harvest*. The concept of democracy has been re-defined to take onboard women, minorities and other marginalised groups. The centre of gravity is indeed shifting. The tide cannot be stopped. The river of resistance will continue to flow and seeds will continue to be watered and nurtured and we shall have many seasons of harvest.

Women appreciate the need to deal with institutional and structural changes in our societies and, therefore, have the will, the ability and the vision to inform our future. We need to create institutions that will transform our societies. It is not enough to get into these institutions; we must transform them by inculcating within them new values, new vision and new democratic, all inclusive structures and practices. This Season of Harvest has made it possible for us to be in the institutions, e.g., the County Assemblies, the National Assembly, and the Senate, among other institutions. That is why women have responded with furry to the idea of progressive implementation of the two-thirds principle and have insisted that 33 per cent is the baseline. The path towards ensuring new values, a vision that is informed by Women’s experiences, perspectives and world view should begin. We must continue to travel the path not often travelled.

We must, like the great river, continue to move towards our destination. We have walked together purposefully, with a common agenda, a national women’s agenda, our people’s agenda. We have been result oriented,

interested in consensus, willing to listen to each other; all the time searching for more common ground. Our national politics which have been divisive, ethnic based, and dominated by ethnic kingpins should learn from the women's road to constitution making. If we borrowed women's strategies of negotiations, the give and take strategies, we would be a less violent people. We would have created a philosophy that binds us together as a people. Our politics would help us create more harmonious and peaceful communities. We would resolve conflicts without machetes, (pangas), spears, arrows and other weapons of destruction. We would have a more peaceful culture, be less violent, more accommodating, more people friendly and less greedy.

Our new constitution, with a very comprehensive Bill of Rights, shows the way to this destination. As in the case of the women's struggle, the river must continue to a more friendly political/social economic culture. In order for us to move forward towards a better society, we need to acknowledge our ethnic diversities and build on those values and interests that bind us together as a Nation. We can identify what binds and promotes the strategic needs and interests of each community and develop strategic interventions around them. This is why our national anthem is a masterpiece. This season of harvest takes us a step closer to our collective prayer—our national anthem. In it, we ask God to *bless this land*, the whole of it, and our *nation*, the whole nation, *Justice to be our shield and defender*. We want to *dwell in Unity, Peace and Liberty*. We also pray that *plenty be found within our borders*.

Creating communities of prosperity and love must be our goal and not power and control of those around us. We should learn from existing women's structures such as women's *vikundi/chamas* (women groups) and other structures whose collateral is their neighbour, their friend; women groups whose governing structures are based on mutual agreement and trust; structures other than hierarchical ones; structures we can use in governing our own institutions and our nation.²³ For us women, looking at our history and acknowledging the struggles of many of us, we can plant the necessary consciousness that will make us understand and harness our struggle towards a

²³ This refers to rotational loaning by fellow group members. At each meeting, weekly, fortnightly or monthly, each member contributes a certain amount of money which is pooled to be given to one member or more in what members term their "merry-go-round" as they draw lots to determine the order of receiving the money. It is an ingenious homegrown micro-finance structure originally practised by disadvantaged women in Kenya but later spread across social stratum. Among the Gikūyū community, it progressed from traditional *ng'watio*, a manual labour activity, where women groups would get together to complete tasks for fellow group members in turns—usually weeding shamba portions. Destitute women whose husbands/sons were either in concentration camps, in the forests as Mau Mau freedom fighters, or were killed during the State of Emergency in Kenya would later apply the concept to perform tasks previously undertaken by men e.g. building houses and generally turning into household heads overnight to fill the vacuum. Joined together by common problems—absence of men in their lives and sheer poverty—these women's *Ng'watio* soon evolved into monetary 'merry-go-rounds' to meet increasing household financial demands that later extended to burdensome school fees for their children and property ownership (*For a fuller account of the State of Emergency in Kenya, see Caroline Elkins: Britain's Gulag: The Brutal End of Empire in Kenya published in 2005 by Jonathan Cape: London*).

better social economic order. We must, as the saying goes; remember our roots because as Darryn John Murphy, 1987 says, “they will give you courage to chase your dreams, wisdom to choose your path, and wings to fly.”

That is why Women’s Movement must keep remembering its roots and those who have planted the seeds of freedom, which we must continue to water. As we water the seeds of freedom, we must cultivate a sense of homecoming, of integratedness, of oneness that allows us to pursue our dream for a better social, political and economic order in which men and women equally share in the development of the nation and the fruits of their labour, and in which both men and women can develop their full potential. As we celebrate this season of harvest, we must know how to retrace our footsteps; celebrating women’s resistance and continuing to water the seeds of freedom will give us the power and energy we need to continue with the journey.

Women will have to be part of a more inclusive network of people who, having rejected patriarchy as a system and finding their own voice, begin to build a new world, a world of communities of love, where true justice prevails. We have to move with our issues, to negotiate institutional structures that promote fairness, democracy, equality and equity and justice for all.

We must nurture memories that we will preserve for our children, our future generations, giving them a history of a proud people and not one of ethnic war/clashes. A history that focuses on the ecstasy of our great forefathers and mothers who fought for independence and continue to sow the seeds of freedom, a history that promotes collective memory, collective struggles for Kenyans and unrelenting efforts by women of this country and Africa, our continent. As we harvest, we shall celebrate our deed of emerging from the shadows, walking in the light, and challenging systems that have relegated us to the status of children of a lesser God. We shall also keep history, the symbols of our struggle, the force of history, and the principles of freedom, alive.

This is what we have tried to do by telling the story of women’s struggle that has led to this harvest. We have reflected on the stories of many women who have from 1992–2011 held on to the struggle and remembered those who have stood on the line of duty. The next generation of women has already received the baton as evidenced by the central role they are playing in the battle for implementation of the two-thirds rule and in recovering the gender commission. These women are young, energetic and ready to continue with the race. The struggle will continue *for we must prepare for the next rainy season even as we fill the granary.*

As the process of implementation of the new constitution takes shape, we have seen that it is not going to be easy. The court cases related to implementation of Article 27 on not more than two-thirds of elective and appointive positions

of either gender is a pointer to the hurdles in the implementation process. The road to nurturing our dreams of a new social political and economic order will have its challenges. Our dreams of a society where the wellbeing of individuals and communities is the primary focus of our leaders must be nurtured. The river of resistance will never dry up for there will always be those watering the seeds of freedom. *Other seasons of harvest will come* but we must be ready to ensure eternal vigilance for that, as the saying goes, is the price of liberty.

Appendix I: List of women mentioned in this book

(Women who presented during the constituency hearings and whose views are summarised in this story. A few men are also included)

Voices from Nyanza (Siaya, Kisumu, Homabay, Migori, Kisii and Nyamira counties):

Achieng	Joyce Ongenga
Akinyi	Judith Adhiambo Okelo
Alice O Rwanda	Landislaus Odwade
Alison Otieno	Margaret Adhiambo
Aloyse Nyabola	Martha Auma Onyango
Andrew Otieno Auko	Mary Auma
Anna Agunda	Mary Auma Ooko
Benjamin Openda	Mary Awuor
Bernard Ochieng	Mary Owour
Cecilia Obunga	Mary Teresa Ogutu
David Otieno	Maurice Odoro
Elizabeth Ochala Aniani	Milka A. Aduar
Esther Auma	Millicent Akinyi
Filida A Odeny	Monica Akira
Florence Ngeso	Monica Atieno Afuodi
George Aditi	Mr John Wasonga Kibusu
Grace Ojwaya	Mr. Peter Oloo
Hilda Awuor Adhong	Otieno Nyandeghe Williams
Hilda Otieno	Patrick Lumumba
Isaiah Wasonga	Phelgona Okundi
Jane Were	Roselyne Okoth
Jared Odera	Rosylene from Sido Moi Girls School
Jessica Achieng	Stanley Ayu Ogebo
John Okuri	William Okoth
Joseph Odhiambo	

Voices from Rift Valley (Turkana, West Pokot, Samburu, Trans Nzoia, Uasin Gishu, Elgeyo/Marakwet, Nandi, Baringo, Laikipia, Nakuru, Narok, Kajiado, Kericho and Bomet Counties):

Adija Fatuma Sitenei	Anna Normat
Agnes Boit	Anne Soter
Agnes Laboso	Arap S. Simoto
Alice Cheluget	Barnabas Sang
Alice Kerich	Beatrice Cherono
Alice Singei	Benson Korir
Anacleto Sang	Berdicto Mogaka
Anna Korir	Bridgit Langat
Anna Kowo	Caroline Chemucsa
Anna Maramat	Carolyne Sophie Sinon

Christina Kiprop
Christine Chebor
Christopher Mitei
Councillor Christine Yatos
Daniel Bussinei
Daniel Ntutu
Daniel Sitienei
Dinah Katina
Dr Philip K. Rono
Edna Sigei
Elizabeth Barno
Elizabeth Kibet
Elsie Rotich
Esther Chumo
Esther Mwenje
Eva Chebet
Florence Koskei
Former MP Joel Barmai
Francis Komen,
Getrude Keitani
Gladys Arwa
Hadija Taalam
Helen Borgoiyet
Helen Koech
Helen Yego
Hellen Kipetu
Henry Baraiywao
Irene Lino
Irene Rono
James Arap Togom
James Malakweni
Jane Kipkemui
Jane Korir
Jane Nyamboa
Jane Ripiko
John Kipkemui
John Njoroge
John Sang
Jonah K. Kibet
Joseph Boit
Joseph Kimeli
Joseph Tuwei
Julian Towett
Juliana Miron

Justina Sitti
Leah Juma
Lilian Chebii
Lynette Rono
Martha Rop
Mary Jepkwony
Mary Kelel
Mary Korir
Mary Simat
Miriam Grace Nabucha
Mrs. Nelly Langat
N.S Kalanjie
Nancy Koech
Nelly Lagat
Nyamai Ochieng
Pacifia Komen
Pamela Tuiyot
Paul Chepkwony
Pauline Chelangat
Peter Maina
Petronilla Mulile
Rabecca Kiptoo
Rebecca Chirchir
Regina Boit
Retired General Aruasa,
Rhoda Masit
Rhoda Sawe
Richard Kirwa
Richard Ole Kibos
Richard Tanui
Ruth Kemboi
Ruth Kimani
Ruth Mbugi
Saitoti Kisiel
Sally Mursoi
Sara Kelel
Selina Sitieng
Selina Tangui
Sheuri Keshe
Stanely Mutai
Susan John Staram
Truphena Sang
Veronica Cheve Aoya
Wilfred Langat

Voices from North Eastern Province (Garissa, Wajir, Mandera and Marsabit counties):

Abas Nunar Hussain Jub Dow	Halima Adoro Malishe
Abdi Ahman Kassim Jirraw	Halima Isaak Hache
Abdi Hukai Guracha	Halima Osman
Abdi Kadir Adan	Halima Siras
Abdi Maalim Isaak	Hani Hasan
Abdia Hailelo	Hassan Ibrahim
Abdia Hassan	Hassan Mohammed Abdi
Abdow Allow	Hassan Sheikh Hassaan
Abdulahi Haji Hussain	Hawa Ali
Abdulahi Sheikh Ahmed	Hawa Mahadi Adan
Adam Mulo,	Hawa Osman
Adan Mohammed Ali	Hussein Abdi Kadhi
Adow Mohammed	Hussein Hassan Hussein
Ahmed Dekhor	Hussein Nurrow
Ahmed Mohammed Alike	Ibrahim Maht
Ali Dima	Ijabo Duale
Ali Isaak Hassan	Isaak Abdulahi
Ali Kalale	Isaak Alache
Alinur Hillow Osman	Kanyari M. Yusuf
Amina Siyat	Kerrow Sheikh Mohammed
Arale Mohammed Ibrahim	Khalif Mohammed Sheikh
Bashow Dakat	Mohammed A. Khalif
Binta Bullo Mahammed	Mohammed Diis Abdulahi
Bishara Ali Hirsi	Mohammed Farah
Bundumba Marow	Mohammed Hassan
Bunei Yusuf	Mohammed Ibrahim Maalim
Councillor Kalime Ibrahim	Mohammed Noor Mady
Dand Ahmed	Mohammed Sherif
Dijah Abdia Hassan	Mohmood Mohammed
Duko Ibrahim	Muktar Sanbur Halima Osman
Ebla Bare	Musa Osman
Fadhuma Adam	Najura Othowai
Fatuma Abraham	Sahara Mohammud
Fatuma Mohammed Mohamud	Shalif Ibrahim
Gaman Hasan Amin	Sheikh Dakano
Habiba Bare Keynan	Sheikh Ibrahim
Habiba Loge Hassam	Siad Barre
Habiba Mohammed	Sugow Hussein Mohammed
Habiba Mohammed Osman	Zainab Gure

Voices from Nairobi Province (Nairobi County):

Bernard Kiveu	Ibrahim Alubala
Betty Moraa	Irungu Ndirangu
Eunice Kasisi	Jacquiline Nyumoo
Eva Kinanu Maloba	Joyce Washira
Fatuma Ali	Julia Wanjohi
Grace Oduor	Lilian Adhiambo

Lillian Momanyi
Madina Isa
Mary Auma
Mary Osinde
Mary Sembe
Mr. Muturi
Mr. Oduor
Mrs. M. Babu
Peter Kanyi
Philemon Ochieng
Rachael Wachira

Rose Kulo
Roselyn Nyamato
Solomon Anampuli
Stella Kimeu
Teresia Amina
Teresia Gitonga
Veronicah Cecilia Wangui
Wairimu Muigai
Zipporah Wambua
Zuhura Wangui

Voices from Eastern Province (Isiolo, Meru, Tharaka Nithi, Embu, Kitui, Machakos, Makueni counties):

Alexia Manyenze
Alice Mutunge
Anastacia Mbithe
Anne Kiema
Arthur Nzomo
Benjamin Muthoka
Benjamin Mwangangi
Benson Mutotoka
Berita Kiamba
Caroline Kenga
Cecilia Tito
Clara Aguthi
Councillor Ngoloma
David Kitika
Elizabeth Museno
Esther Kikuvi
Faith Kyalo
Fredrick Makau Mutinde
Grace Alex
Grace Loti
Irene Ngate
Jane Muloo
John Ngili

Joseph Kioko
Josiah Mwendwa
Judas Mutua
Juliana Mwanja
Julius Maundu
Julius Mutuku
Justina Kasunga
Justina Mukebi Kavinya
Justus Ngunga
Maimuna Mwidau
Margaret Chuma
Margaret Mutua
Martin Kasenge
Mary Maithya
Mary Wamaitha
Monica Ngina Mutua
Rael Muoki
Rebecca Nzuki
Rose Mulu
Tabitha Neka
William Matheka
Wilson Nzioki

Voices from Western Province (Kakamega, Vihiga, Bungoma and Busia counties):

Alex Osebe
Alfred Ouma
Alice Ogama
Alphaso Otiato
Angelina Asieno
Apiyo Gongo
Arthur Ochanda
Asanya Ben Asanya

Asha Okumu
Assumpta, Headmistress
Benedict Makhulo
Benjamin Wanyama
Brenda Okoch
Brenda, a form III student
Carol Omoto
Carolyne Jakobam

Carolyne Yamo
 Charles Oruma
 Chrispina Odima
 Cornel Mabachi Algak
 Councillor Agostino Makina
 Councillor Gloria Mwabire
 Dick Mukubi
 Dixon Ouma
 Domiano Were
 Dominic Masinde
 Edith Mbwire
 Emma Makuku
 Faustin Odongo
 George Omondi
 George Yasimba
 Gideon Nyende
 Henet Nayoma
 Imelda Juma
 Inucolata Atieno
 Jacktone Masaba
 John Moganda
 Joseph Wafula
 Joseph Wanga
 Josephat Magio
 Joyce Oloo
 Judith Taka
 Lilian Oyalo
 Lois Magwagwa
 Lucy Karaya
 Lukas Were
 Magdalene Njambi
 Marcelina Oranda
 Marcella Tembe
 Martin Kubasy

Mary Ngweni
 Mary Olaza
 Mercy Oeri
 Meshak Waswa
 Mohammed Mubale
 Mr. Rakuoni
 Nangina Girls Secondary School
 Nicholas Khaduli
 Nicholas Okumu
 Nicholas Were
 Okoth Batholomeo
 Paschalia Ochieng
 Patricia Sanda
 Patrick Oyagi
 Paul Baraza
 Pauline Nagila
 Pauline Osogo
 Peter Mbaye
 Prisca Onyango
 Rachael Migongo
 Redempta Anyango Odongo
 Rev. Father Oudo
 Romano Ochiel
 Rose Masiga
 Roselinda Opiba
 Samuel Mwoto
 Scholastica Asieno
 Simon Petu
 Sr. Agnes Maulo
 Teresia Nahumacha
 Vincent Wanjala
 Wilberforce Aringo
 William Odhiambo
 Winnie Nagila

Voices from Central Province (Nyandarua, Nyeri, Kirinyaga, Murang'a and Kiambu counties):

Benson Maina
 Beth Wahito Njoroge
 Coroline Ng'ang'a
 Dedan Kimathi
 Elizabeth Muthoni
 Elizabeth Wangari
 Field Marshal Muthoni
 Florence Wangari
 Grace Wakoia
 Grace Wanjiku Njuki
 Hanna Mwihaki Muturi
 Isabella

Jane Kariuki
 Martha Njeri wa Macharia
 Mary Gichuki
 Mary Wanjiru
 Mrs. Joyce Kang'ethe
 Ms Jean Kiama,
 Nancy Muthoni
 Njoki wa Hiram
 Nyathogora
 Pauline Wanjiru wa Gitau
 Peter Thuita
 Rahab Wabici

Rose Njuguna
Ruth Ngugi
Sarah Wambui
Teresia Njeri Ng'ang'a

Wambui Kanyi
Wangu wa Makeri
Wanjiru wa Kaguru

Others whose voices are reflected in the text

Aileen Gathoni
Alexander the Great Julius Caesar
 Napoleon
Amb. Francis Muthaura
Amina Abdalla
Anne Njogu
Archbishop Zachaeus Okoth
Atsango Chesoni
Ayoo Odicoh
Beatrice Elachi
Beatrice Kizi
Beatrice Konya
Beatrice Nzovu
Benazir Bhutto of Pakistan
Benjamin Mkapa
Bethuel Kiplagat
Bishop David Gitari
Bishop Ndingi Mwana Nzeki
Bishop Njoroge
Bishop Nthamburi
Bishop Philiph Sulemeti
Caroline Ng'ang'a
Caroline Ruto,
Catherine Nyamato
Cecilia Kimemia
Charles Ohare
Chebet from Keiyo South
Cherono Rebecca
Com. Alice Yano
Com. Charles Maranga
Com. Domiziano Ratanya
Com. Dr. Mohammed Swazuri
Com. Musonik Arap Korir
Com. Mutakha Kangu
Com. Pastor Z. Ayonga
Com. Prof. Salim
Com. Riunga Rainji
Com. Salome Muigai
Daisy Amdany
Daisy Cherop
Deborah Okumu
Denis Akumu

Dr. Adhu Awiti
Dr. Akinyi Nzioki
Dr. Betty Gikonyo
Dr. Eddah Gachukia
Dr. Hutchinson
Dr. Kamau Kuria
Dr. Maranga
Dr. Ruth Kibiti
Dr. Wangui Njau
Dr. Wanjiku Mwotia
Erastus Wamugo
Esther wa Wilson
Fabu Mogaka
Fannie Lou Hammer, Chairman Mao
 Tse Tung
Fatuma Ibrahim
Field Marshal Muthoni
Flora
Former AG Mathew Guy Muli
Francis Angila
George Anyona
George Kinyua
Gibson Kamau Kuria
Grace Mwewa
Grace wa Kioya
Happy Gloria
Harriet Tubman of USA
Helen Korir
Hilda Orimba
Hon. Abida Ali Aroni
Hon. Achieng Oneko
Hon. Adelina Mwau
Hon. Agnes Ndeti
Hon. Alicen Chelaite,
Hon. Beth Mugo
Hon. Betty Tett
Hon. Bonaya Godana
Hon. Boniface Nyaga
Hon. Bonny Khalwale
Hon. Cecily Mbarire
Hon. Charity Ngilu
Hon. Dalmas Otieno

Hon. Daniel Arap Moi	Hon. Nicholas Biwot
Hon. David Koech	Hon. Njeru Gathangu
Hon. Dr. Gikonyo Kiano	Hon. Njoki Ndungu
Hon. Dr. Ooko Ombaka	Hon. Norman Nyaga
Hon. Esther Keino	Hon. Omingo Magara
Hon. G.G. Kariuki	Hon. Otiato Marende
Hon. Gitobu Imanyara	Hon. Otieno Kajwang
Hon. George Nthenge	Hon. Paul Muite
Hon. Guracha Galgalo	Hon. Phoebe Asiyo
Hon. Henry Kosgey	Hon. Prof. George Saitoti
Hon. J.J. Kamotho	Hon. Raphael Tuju
Hon. James Orengo	Hon. Raphael Wanjala
Hon. James Osogo	Hon. Ruth Oniang'o
Hon. Jebii Kilimo	Hon. Shaban Isaak
Hon. Jeremiah Nyaga	Hon. Shariff Nassir
Hon. John Michuki	Hon. Simeon Nyachae
Hon. John Serut	Hon. Taita Towett
Hon. Julia Ojiambo	Hon. Uhuru Kenyatta
Hon. Julius Gikinyo	Hon. Wangari Maathai
Hon. Julius Sunkuli	Hon. William Ole Ntimama
Hon. Justin Muturi	Hon. William Ruto
Hon. Kalonzo Musyoka	Hon. Winnie Biaminya, Uganda's former MP
Hon. Katana Ngala	Hon. Zadock Syongo
Hon. Kiangoi	Ibrahim Lethome
Hon. Kijana Wamalwa	Ida Odinga
Hon. Kipkalia Kones	Irene Oloo
Hon. Kiraitu Murungi	Jael Mbogo
Hon. Koigi wa Wamwere	James Foster
Hon. Maalim Mohammed	Jane Kiano
Hon. Maoka Maore	Jane Ogot
Hon. Margaret Kamar	Jane Ogwapit
Hon. Martha Karua	Jimmy Angweny
Hon. Martin Shikuku	Joyce Kangethe
Hon. Masakhalia	Joyce Lusiji
Hon. Millie Adhiambo	Joyce Majiwa
Hon. Minister Hope Mwesigye of Uganda	Joyce Umbima
Hon. Minister Mary Nagu of Tanzania	Judge Emmanuel Okubasu
Hon. Miriam Matembe, Uganda's former Minister for Ethics	Judge Erastus Githinji
Hon. Moody Awori	Judge Philip Tunoi
Hon. Moses Akaranga	Julius Nyerere
Hon. Moses Wetangula	Justice Daniel Aganyanya
Hon. Mukhisa Kituyi	Justice Deverell J.J.A
Hon. Mutiso	Justice Isaac Lenaola
Hon. Mutua Katuku	Justice Philip Waki
Hon. Mutula Kilonzo	Kabira
Hon. Mwai Kibaki	Kagwiria Mbogori
Hon. Newton Kulundu	Kamla Sikand
	Karambu Kabira

Kavetsa Adagala
Kennedy Kiliku
Kipsirma
Kisiero Mathenge
Lilian Mwaura
Lilian Wakiiya Mwausa
Louise Awiti
Lucy Githaiga
Lucy Kibaki
Lydia Kimani
Maggie Gonah
Mahatma Gandhi
Major Madoka
Margaret Nyathogora
Margaret Wanjiru
Mariama Ba of Senegal
Marie Antoinette Budha
Martha Koome
Martin Luther King
Mary Ngechu
Mary Nyanjiru
Mekatilili wa Menza
Mercy Mwamburi
Mother Teresa
Mrs Orimba
Mrs. Bandaranaike of Sri Lanka
Mrs. Corazon Aquino of Philippines
Mrs. Indira Gandhi of India
Mrs. Peron of Argentina
Muthoni Likimani
Muthoni wa Willy
Muturia Kabira
Mwachiro
Mzee Jomo Kenyatta
Naitera's son Njoroge
Naitera-Wanjiku wa Mathaai Mahinda
Nancy Baraza
Nelson Mandela
Njoki wa Hiram
Njoki Wainaina
Nkatha Kabira
Nyaradzai Gumbonzivada
Nyokabi
Orie Rogo Manduli
P.L.O Lumumba
Paul Kagame
Peter Mburu Icharia

Praxides Nekesa
Priscilla Njeri Ichara
Priscilla Obwonya
Prof. Githu Muigai
Prof. Jackline Oduor
Prof. Kivutha Kibwana
Prof. Knight
Prof. Maria Nzomo
Prof. Okoth Ogendo
Prof. Shanyisa Khasiani
Prof. Wanjiku Mukabi Kabira
Prof. Yash Pal Ghai
Prophetess Moraa of Kisii
Rabecca Cherono
Rachael Omamo
Rahab Muiu
Rev. Hon. Mutava Musyimi
Rhoda Maende
Robert Matano
Rose Waruhiu
Rukia Subow
Runga Rainji
Ruth Habwe
Ruth Rop
Said Athman
Sarah Wambui
Sarah Wanjohi
Shiten
Sofia from Samburu
Stalin
Steve Mwanesi
Tabitha Seei
The late Mbae
The late Ndindiri
Tobiko Keriako
Tom Mboya
Wachira Maina
Wairimu- Mwari wa Kanyiri
Wambui Kabira
Wambui Kanyi
Wambui Kimanthi
Wambui Otieno
Wamuyu wa Gakuru
Wanjiru Kihoro
Wanjiru wa Kagwa
Wanjiru wa Kang'ethe
Zipporah Kittony

Appendix II: List of women delegates at Bomas

Women Members of Parliament

<i>Delegate Number</i>	<i>Name</i>	<i>Constituency</i>
019	Chelaite Alicien Jenatia Rono	Rongai
044	Karua Martha Wangari	Gichugu
057	Kihara Njeri Jayne	Naivasha
058	Kilimo Lina Jebii	Marakwet West
083	Maathai Wangari Muta	Tetu
092	Mango Christine Abungu	Butula
112	Mugo Beth Wambui	Dagoretti
143	Ngilu Charity Kaluki	Kitui Central
188	Naomi Shaaban Namsi	Taveta
211	Abdala Amina Ali	Nominated
214	Keino Esther C.	Nominated
217	Mbarire Cecily M.	Nominated
219	Njoki Susanna	Nominated
220	Ojiambo Julia A.	Nominated
221	Oniang'o Ruth K.	Nominated
222	Tett Betty N.	Nominated

District representatives

Nairobi province

<i>Delegate Number</i>	<i>Name</i>	<i>District</i>
224	Nancy Kabeyeka Lung'ahi	Nairobi

Coast province

<i>Delegate Number</i>	<i>Name</i>	<i>District</i>
227	Amina Zuberi Rajab	Mombasa
230	Boi Fatuma Bakari	Kwale
233	Mwaringa Beatrice Mwaka	Kilifi
236	Zuhura Zukira Wanje	Malindi
239	Halako Fatuma Galogalo	Tana River
242	Ahmed Amina Muhudhar	Lamu

North Eastern province

<i>Delegate Number</i>	<i>Name</i>	<i>District</i>
248	Asli Ibrahim Ali	Garissa
253	Salah Arte Ahmed	Ijara
254	Fatuma Sheikh Muhammed	Wajir
257	Sarah Ahmed Hillow	Mandera

Eastern province

<i>Delegate Number</i>	<i>Name</i>	<i>District</i>
261	Khadija Fugicha Dabassa	Moyale
264	Esintele Kureya	Marsabit
267	Fatuma Boru Jaldesa	Isiolo
270	Bariu Beatrice	Nyambene
273	Muriuki Joyce Kagendo	Meru Central
276	Ndeke Leah Ciamwari	Meru South
279	Nduyo Grace Ntembi	Tharaka
282	Kimani Lydia Wanjiru	Embu
285	Naleah Gatiti Githumbu	Mbeere
288	Mutunga Jane Mwikali	Mwingi
291	Jane Mwende Pius	Kitui
294	Victoria Mutheu Musyoka	Machakos
298	Maende Rhoda Ndumi	Makueni

Central province

<i>Delegate Number</i>	<i>Name</i>	<i>District</i>
300	Lydia Wambui Muriuki	Nyandarua
303	Margaret Nyathogora	Nyeri
306	Ngari Christine Nyawira	Kirinyaga
309	Kirangari John Kamwanga	Murang'a
312	Mburu Muthoni Mary	Maragua
315	Beatrice Wairimu Kamamia	Thika
318	Hannah Nyambura Kimani	Kiambu

Rift Valley province

<i>Delegate Number</i>	<i>Name</i>	<i>District</i>
321	Loyor Rhoda Arupe	Turkana
324	Koringura Hellen	West Pokot
327	Lepuchirit Sophia	Samburu
330	Nancy Iyadi	Trans Nzoia
333	Emmy Jerono Kipsoi	Uasin Gishu
338	Kiptum Jane Jebiwott	Marakwet
339	Caroline Chemursoi	Keiyo
342	Magut Felicity Irine	Nandi
345	Lekisemon Mariamu Ntausian	Baringo
348	Chepkoech Sally	Koibatek
351	Pascalina Riwandi Lebarleiya	Laikipia
354	Lizah Chepkorir Chelule	Nakuru
357	Teclah Nairesiai Munkushi	Trans Mara
360	Lorna Timanoi Tetu	Narok
363	Keko Simoina Margaret	Kajiado
366	Caroline Cherotich Ruto	Bomet
369	Christina Cherono Ngeno	Kericho
372	Bornice Chelangat Soi	Buret

Western province

<i>Delegate Number</i>	<i>Name</i>	<i>District</i>
375	Nandako Jane Kauka	Lugari
378	Dorcas N. Mbelesia	Kakamega
381	Katamu Rita Ombito	Butere-Mumias
384	Jandeka Rebecca Evelia	Vihiga
387	Ngeywa Cherotich Nancy	Mt. Elgon
390	Kellan Khoma Wavomba	Bungoma
393	Ashepete Baraza Roseline	Teso
396	Akhayalu Happy Gloria Wabwire	Busia

Nyanza province

<i>Delegate Number</i>	<i>Name</i>	<i>District</i>
399	Ogot Grace Emily Akinyi	Siaya
400	Owino Rose Marie	Siaya
402	Eve Akinyi Obara	Karachuonyo
405	Ochola Fibie Atieno	Kisumu
408	Nam Judith Achieng Oyalo	Nyando
411	Ogotu Teresa Usunga	Homabay
414	Okello Elizabeth Nyangetha	Migori
417	Atonga Gaudentia Agoko	Suba
420	Susan Wambura Jackson	Kuria
423	Clare Kwamboka Omanga	Kisii
426	Orwenyo Mary Obonyo	Nyamira
429	Judith Mugundho	Bondo
432	Rhosa Gesare Kamanda	Gucha

Non-Governmental Organisations (NGOs) representatives

<i>Delegate Number</i>	<i>Name</i>
465	Beatrice Nduta Kiarie
466	Joyce Umbima
467	Mary Wambui Kanyi
468	Hellen Jepketich Too- Yego
469	Grace N. Githaiga
470	Sophia Abdi
471	Rose Kasiala Lukalo – Owino
472	Miriam Muto
473	Pamela Arwa Mboya

Professional organisations representatives

<i>Delegate Number</i>	<i>Name</i>	<i>Organisation</i>
475	Ann Wairimu Njogu	ICPSK
477	Raychelle Awuor Omamo	LSK

Women's organisations representatives

<i>Delegate Number</i>	<i>Name</i>
489	Jane Mumbi Kiano
490	Rose Waruhiu
491	Lilian Wanjira
492	Mercy Mwamburi
493	Amina H. Soud
494	Kauchi A. Chivumba
495	Martha Koome
496	Ann Mululu
497	Jilo Mumina Konso
498	Maria Nzomo
499	Tabitha Seii
500	Kamla Sikand
501	Joyce M. Majiwa
502	Rose A. Olende
503	Elizabeth Mayieka
504	Aweis Nasra Abubakar
505	Fatuma Ali Saman
506	Fatuma Ibrahim Ali
507	Margaret Kamar
508	Mareso Agina
509	Martha Rop
510	Atsango Chesoni
511	Ruth N. Kibiti
512	Florence Machayo

Religious organisations representatives

<i>Delegate Number</i>	<i>Name</i>	<i>Organisation</i>
518	Fadhili Sultana	MCC
519	Gacambi Marie Therese	Kenya Episcopal Conference
521	Wahu Kaara	PCEA
523	Kamau Ruth Wanjiku	Evangelical Fellowship of Kenya
524	Kapila Neera Kent	Hindu Council of Kenya
526	Kinyanjui Rosemary M.	Anglican Church of Kenya

530	Mburugu F. W. Ruhiu	Kenya Episcopal Conference
533	Mung'athia Hellen	Methodist Church of Kenya
536	Mwaniki Tabitha Mumbi	SDA

Commissioners of the Constitution of Kenya Review Commission

<i>Delegate Number</i>	<i>Name</i>
550	Abida Ali-Aroni
552	Phoebe Asiyu
555	Salome Wairimu Muigai
556	Alice Yano
557	Wanjiku Mukabi Kabira
561	Nancy Makokha Baraza
563	Kavetsa Adagala

Political parties representatives

<i>Delegate Number</i>	<i>Name</i>	<i>Organisation</i>
587	Caroline Ng'ang'a	Labour Party of Kenya
594	Orie Rogo Manduli	FORD People

Special interest groups

<i>Delegate Number</i>	<i>Name</i>
622	Bernadette Quadros

Appendix III: CKRC Commissioners

Commissioner Prof. Yash Pal Ghai	–	Chair 2000-2004
Commissioner Prof. Idha Salim	–	1 st vice chair 2002-2005
Commissioner Prof. Okoth Ogada	–	Vice chair 2002-2005
Commissioner Dr. Oki Ombaka	–	Vice chair 2000-2002, PCK chair 1999-2000
Commissioner Mrs. Abida Ali Aroni	–	Vice chair 2000-2004, Chair 2004 -2005
Commissioner Wanjiku Mukabi Kabira	–	Vice chair 2004-2005
Commissioner Mutakha Kangu		
Commissioner Ibrahim Lethome		
Commissioner Abubakar Zein Abubakar		
Commissioner Dr. Arale Nunor		
Commissioner Nancy Baraza		
Commissioner Issack Hassan		
Commissioner Dr. Abdirizak Nunor		
Commissioner Musonik Arap Korir		
Commissioner Salome Muigai		
Commissioner Keriako Tobiko		
Commissioner Dr. M.A. Swazuri		
Commissioner Riunga Rainji		
Commissioner Alice Yano		
Commissioner Charles Maranga		
Commissioner Isaac Lenaola		
Commissioner Domiziano Ratanya		
Commissioner Pastor Z. Ayonga		
Commissioner Bishop Bernard Njoroge Kariuki		
Commissioner Mr. Paul Musili Wambua		
Commissioner Kavetsa Adagala		
Commissioner Attorney General Amos Wako		

Appendix IV: Committee of Experts Commissioner (CoE)

Commissioner Nzamba Kitonga	–	Chairperson
Commissioner Atsango Chesoni	–	Vice chairperson
Commissioner Ekuru Aukot	–	Director
Commissioner Amos Wako	–	Attorney General
Commissioner Njoki S. Ndung'u		
Commissioner Christina Murray		
Commissioner Chaloka Beyani		
Commissioner Bobby Mkangi		
Commissioner Frederick E Ssempebwa		
Commissioner Abdirashid Abdullahi		
Commissioner Otiende Amollo		

Appendix V: List of constituencies referred to in the analysis

Budalangi Constituency	Kilome Constituency
Butula Constituency	Kinangop Constituency
Dagoretti Constituency	Lari Constituency
Dhiwa Constituency	Limuru Constituency
Eldoret East Constituency	Makadara Constituency
Eldoret North constituency	Mandera East Constituency
Eldoret South constituency	Mandera West Constituency
Embakasi Constituency	Manyatta Constituency
Fafi Constituency	Matuga Constituency
Funyula Constituency	Mbeere Constituency
Gwasi Constituency	Meru North Constituency
Juja Constituency	Meru South Constituency
Kaiti Constituency	Mwatate Constituency
Kamukunji Constituency	Narok South Constituency
Kapenguria Constituency	Ndia Constituency
Kasarani Constituency	Rangwe Constituency
Keiyo North Constituency	Saboti Constituency
Keiyo South Constituency	South Kinangop Constituency
Kibwezi Constituency	Westlands Constituency

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Kaiti Constituency	Mwatate Constituency
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Kapenguria Constituency	Ndia Constituency
Kasarani Constituency	Rangwe Constituency
Keiyo North Constituency	Saboti Constituency
Keiyo South Constituency	South Kinangop Constituency
Kibwezi Constituency	Westlands Constituency

Appendix VI: Memorandum from the women of Kenya on the PSC Draft Constitution of Kenya (2010)

RE: Please don't lose the gains for women

The concerns of Kenyans since independence and in all aspects of life (political governance, economic development, land, use of national resources, access to services and opportunities in the public sector) have always been about breaching the inequalities and the consequent injustices they have caused various sections of the population are presented here below. The specific concerns that women would want reinstated in the draft constitution. These issues are not contentious and have been common features in all past draft constitutions.

Representation:

National values principles and goals:

This is very important for constitution making. The CoE had properly entrenched these under Clause 13. They included key principles that are important for entrenching the culture of facilitating inclusion of vulnerable populations and ensuring equality for women and other marginalised groups. At Clause 13 (2), they had entrenched the principles of :

- (i) Ensuring full participation of women, persons with disabilities, marginalised communities and all other citizens in the political, social and economic life of the nation.
- (j) Implementing the principle that no more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

The PSC draft has recommended removal of this clause among others. PSC has located this Principle (j) in the General principles for the electoral system and process by (Part I) - which talks about systems and processes but does not clearly place responsibility on ensuring the principle is actualised in practice.

Proposal

We urge you to revert to the CoE draft on the above provisions, or reconsider your recommendation.

Composition of the National Assembly

The allocation of the seats in the national Assembly does not respect the principle of no more than two thirds of one gender.

Appendix IV: Committee of Experts Commissioner (CoE)

Commissioner Nzamba Kitonga	–	Chairperson
Commissioner Atsango Chesoni	–	Vice chairperson
Commissioner Ekuru Aukot	–	Director
Commissioner Amos Wako	–	Attorney General
Commissioner Njoki S. Ndung'u		
Commissioner Christina Murray		
Commissioner Chaloka Beyani		
Commissioner Bobby Mkangi		
Commissioner Frederick E Ssempebwa		
Commissioner Abdirashid Abdullahi		
Commissioner Otiende Amollo		

Appendix V: List of constituencies referred to in the analysis

Budalangi Constituency	Kilome Constituency
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Eldoret East Constituency	Makadara Constituency
Eldoret North constituency	Mandera East Constituency
Eldoret South constituency	Mandera West Constituency
Embakasi Constituency	Manyatta Constituency
Fafi Constituency	Matuga Constituency
Funyula Constituency	Mbeere Constituency
Gwasi Constituency	Meru North Constituency
Juja Constituency	Meru South Constituency
Kaiti Constituency	Mwatate Constituency
Kamukunji Constituency	Narok South Constituency
Kapenguria Constituency	Ndia Constituency
Kasarani Constituency	Rangwe Constituency
Keiyo North Constituency	Saboti Constituency
Keiyo South Constituency	South Kinangop Constituency
Kibwezi Constituency	Westlands Constituency

Of the 349 proposed parliamentary seats, only 47 (13.5 per cent) are special seats for women, which is below the threshold for affirmative action. There is also no proposal on how the one third will be achieved.

Proposal:

- 1). The special seats for women are increased to 74, from the proposed 47 to effectively address the principle of Affirmative Action.
- 2). Affirmative action measures are temporary measures that must aim at achieving the expected level of equality and should not be time bound.

Devolution - public finance

Chapter Twelve (Section 195 (5) of the PSC Draft on revenue allocation from national government to county government sets a minimum of 15 per cent of total national revenue. Even in low income countries, this does not satisfy the threshold for equitable resource allocation and will further marginalise women and other vulnerable groups, defeating the principle of Devolution.

Proposal:

- 1) If a minimum is to be maintained, we propose at least 40 per cent of the national revenue to be devolved to county governments to adequately address Kenya's development agenda.
- 2) The alternative to the above is to leave the criteria for resource allocation to legislation.

Other issues: *Culture*

The CoE draft had helped to indicate what the parameters of culture should include. This is important for women and other marginalised groups because most of the violations they face are done in the name of culture and customary practices.

Proposal

Kindly re-instate the clause as captured in the CoE harmonised draft.

The Bill of Rights

The CoE entrenched the different socio-economic rights additional to the traditional civil and political rights, even though this would have been better achieved by out rightly recognizing the rights in ratified international human rights instruments. They repeated the government's obligation to domesticate these instruments.

The PSC draft recommended the deletion of the State Obligation to domesticate International Human Rights instruments as had been provided for by the CoE.

It deleted the socio-economic rights and relegated to parliament the sole power to decide, through legislation.

Effect – many interest groups will lose on inclusion of their rights – and the opportunity to share in the new constitutional order. Specific population groups have also lost in total; they include emergency populations, children and the elderly.

Proposal:

- 1) The recognition of the rights in ratified regional and international human rights instruments. This will be the greatest gain for all marginalised populations including women.
- 2) We insist that the recognition of these rights should not be downgraded to the level of legislation and at the discretion of Parliament.

The Right to Life

Whereas the definition of when life begins does not add value on the provision on abortion, it has the potential of negatively impacting the health of women in certain matters as follows:

- a) Some forms of contraceptives will become unconstitutional;
- b) The administration of some forms of Post exposure prophylaxis measures after sexual violence may become unconstitutional;
- c) Because the sub-clause is not in any way linked to the others in 25 it could be interpreted negatively to require clearance of the constitutional court before women rushed in with ectopic pregnancies or conceptions that turn into tumours are operated.

The Gender Commission

As the Women's Movement, we propose that the Gender Commission be entrenched in the Constitution.

Submitted by:

- Women in Law and Development Africa-Kenya (WILDAF Kenya),
- Kenya Women Parliamentary Association (KEWOPA),
- Development Through Media,
- Young Women Leadership Institute (YWLI),
- The Caucus for Women Leadership (CWL),
- Federation of Women Lawyers Kenya (FIDA K),
- Coalition on Violence Against Women (COVAW),
- The League of Muslim Women Kenya,
- Action Aid Kenya,

- Bridge Africa,
- Southern Oregon Research and Extension Centre (SOREC),
- The Women's Political Alliance Kenya,
- Maendeleo Ya Wanawake,
- Tomorrows Child Initiative,
- Women for Justice in Africa,
- African Woman and Child Feature Service (AWC),
- African Women Communication and Development Network (FEMNET),
- Kangemi Women Empowerment Centre,
- The League of Kenya Women Voters,
- Women Empowerment Society (WES),
- Centre for Rights Education and Awareness (CREAW),
- Collaborative Centre for Gender and Development (CCGD),
- National Council of Women of Kenya (NCWK).

cc

- The Chairman and members PSC
- Committee of Experts on the Constitution
- KEWOPA

Appendix VII: Petition

National Women's Conference on the first anniversary of the promulgation of the constitution meeting at Ufungamano House

Urgent petition to the tenth National Assembly of Kenya August 26th 2011

The women of Kenya have today met at Ufungamano House at the National Women's Conference to celebrate the Women's Movements and their gains a year after the promulgation of the Constitution of Kenya, 2010. Among the participants are women representatives from the various Counties of Kenya including the doyens of the women's struggle in Kenya.

We are dismayed and outraged to learn that the National Assembly this afternoon refused the proposed amendment to the Elections Bill 2011, those amendment intended to provide a method of ensuring that the Constitutional requirement stating that not more than two-thirds of either sex shall comprise elective bodies is adhered to.

Brief statement of the problem

The two-thirds Constitutional threshold arises from a close analysis of the relevant Articles in the Constitution. The relevant provisions include:

- a. Quite significantly, Article 27 (6) and (8) of the Bill of Rights which indicates that ... (6) To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination... (8) In addition to the measures contemplated in clause (6) the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.
- b. Article 97(1) (a) of the Constitution sets out the number of elected legislators to Parliament at two hundred and ninety, each elected from single member constituencies. This already sets the electoral method to a first-past-the post system. Sub-article 1 (b) provides for forty-seven women to be elected based on the forty-seven counties while sub-article 1 (c) provides for twelve members to be nominated by parliamentary political parties in proportion to their parliamentary strength and to represent special interests including youth, persons with disabilities, and workers.
- c. Article 97(2) reiterates that no one can be excluded from contesting in the election under sub-article 1(a) which essentially means that despite

forty-seven seats being reserved for women, they are still free to vie for elective posts too.

- d. In addition, Article 81 of the Constitution prescribes general principles for the electoral system. Sub-article (b) states that, “*not more than two-thirds of the members of elective public bodies shall be of the same gender.*”
- e. Article 100 of the Constitution reiterates the essence of Article 27(8).

When closely examined and read altogether, these Articles definitely provide for Affirmative Action to be implemented immediately with regards to women’s representation. Consider the following:

- a. Article 21(2) states: “The State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under Article 43 [Relates to Economic and Social Rights].”
- b. Article 54(2): “The State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.
- c. Article 82(1): Parliament shall enact legislation to provide for—(e) the progressive registration of citizens residing outside Kenya, and the progressive realisation of their right to vote.
- d. Article 89(7)(b): In reviewing constituency and ward boundaries, the Commission shall progressively work towards ensuring that the number of inhabitants in each constituency and ward is, as nearly as possible, equal to the population quota.

It is difficult to sell the argument that when it came to defining the two-thirds criteria, somehow the makers of the Constitution were careless and forgot to delineate that the threshold was to be achieved progressively. For this reason, the reading of the two-thirds criteria must be construed as having been intended for immediate application.

As to whether Article 81 ought to be construed as Constitutional principles that are desirable but not mandatory in the strict sense and hence to be achieved progressively, it is instructive to note that the other ‘*principles*’ in the same Article that refer to freedom of citizens to exercise their political rights, universal suffrage and free and fair elections are not being read in the same spirit. In other words, a deliberate choice is being made as to when a principle in the same Article ought to be construed loosely as a desirable thing or strictly as a mandatory requirement.

The basis of women's demands

Based on the arguments and counter arguments that have been levied in recent weeks on the subject matter, the clear lack of political will to implement these Constitutional provisions has been evident. At the core of this refusal by yourselves Honourable Members of Parliament, to understand the meaning of why Affirmative Action has been provided for in the Constitution, is the sheer lack of shame as to how we have left women behind in the walk towards justice, equality and development.

It is imperative that the Constitutional threshold of not more than two-thirds is understood not as a women's issue but a Constitutional requirement that both men and women must ensure compliance thereof to avert a national Constitutional crisis.

The National Women's Conference, therefore, demands that the National Assembly, guided by the Speaker, immediately provides in no uncertain terms a way forward with regard to the implementation of the Constitutional two-thirds threshold that is anchored in the Bill of Rights and, therefore, not negotiable. The Bill of Rights enjoins all three organs of the State to take legislative and other measures to ensure the realisation of this Constitutional threshold. Parliament is one such arm of the State not to mention the Executive that is headed by President and supervised by the Prime Minister and the Judiciary, that is, superintended by the Chief Justice.

The women of Kenya are not asking for favours from Parliament but are demanding that you comply with the provisions of the Constitution.

Appendix VIII: Amendment Bill, 2011

The Constitution of Kenya (Amendment) Bill, 2011

A Bill for AN ACT of Parliament to amend the Constitution of Kenya
ENACTED by the Parliament of Kenya, as follows-

- | | |
|--------------------------|--|
| Short title. | 1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2011. |
| Amendment of Article 90. | 2. Article 90 of the Constitution is amended in clause (1) by deleting the expression “Articles 97(1) (c) and 98(1)(b), (c) and (d)” and substituting therefore the expression “Articles 97(1)(c) and (ca) and 98 (1)(b), (c), (d) and (da).” |
| Amendment of Article 97. | 3. Article 97 of the Constitution is amended by inserting the following new paragraph after paragraph (c)-
“(ca) the number of special seat members necessary to ensure that not more than two-thirds of the membership of the National Assembly are of the same gender, nominated by political parties according to their proportion of members of the Assembly elected under clauses (a) and (b), in accordance with Article 90.” |
| Amendment of Article 98. | 4. Article 98 of the Constitution is amended by inserting the following new paragraph after paragraph (d)-
“(da) the number of special seat members necessary to ensure that not more than two-thirds of the membership of the Senate are of the same gender, nominated by political parties according to their proportion of members of the Senate elected under clause (a), in accordance with Article 90.” |

Memorandum of objects and reasons

The Constitution of Kenya, 2011, makes several references to gender equality and freedom from discrimination. In the preamble, the Constitution recognises “the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law.”

Article 27 of the Constitution, in providing for equality and freedom from discrimination, requires, at clause (4) that the State shall not discriminate directly or indirectly against any person on any ground, including, amongst others, sex. Concerning the representation of the people, Article 81 of the Constitution sets out the general principles which the electoral system is

required to comply with. In particular, Article 81(b) of the Constitution requires that “not more than two-thirds of the members of elective public bodies shall be of the same gender.” Unfortunately, thereafter, Articles 97 and 98 of the Constitution which set out the composition of the two Houses of Parliament do not specifically stipulate the modalities for abiding by this core constitutional principle.

Article 97(1) of the Constitution provides that the National Assembly shall consist of:

- (a) two hundred and ninety members, each elected by the registered voters of single member constituencies;
- (b) forty-seven women, each elected by the registered voters of the counties, each county constituting a single member constituency;
- (c) twelve members nominated by parliamentary political parties according to their proportion of members of the National Assembly in accordance with Article 90, to represent special interests including the youth, persons with disabilities and workers; and
- (d) the Speaker, who is an *ex officio* member.

For its part, Article 98(1) of the Constitution provides for the membership of the Senate as follows:

- (a) forty-seven members each elected by the registered voters of the counties, each county constituting a single member constituency;
- (b) sixteen women members who shall be nominated by political parties according to their proportion of members of the Senate elected under clause (a) in accordance with Article 90;
- (c) two members, being one man and one woman, representing the youth;
- (d) two members, being one man and one woman, representing persons with disabilities; and
- (e) the Speaker, who shall be an *ex officio* member.

The result is that Articles 97(1) and 98(1) of the Constitution as worded would most likely result in a National Assembly and a Senate in which more than two-thirds of the members are of one gender; a scenario that would contravene Article 81(b) of the Constitution.

It is noteworthy that Article 177 of the Constitution in providing for the membership of the county assemblies guards against such an eventuality by taking into account the principle provided for in Article 81(b) of the Constitution. The Article provides that a county assembly is to consist of:

- (a) members elected by the registered voters of the wards, each ward constituting a single member constituency, voted on the same day as a

general election of Members of Parliament, being the second Tuesday in August, in every fifth year;

- (b) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender;
- (c) the number of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament; and
- (d) the Speaker, who is an *ex officio* member.

The proposed amendment seeks to harmonise Articles 97(1) and 98(1) of the Constitution with the requirements of the gender principle under Article 81(b) of the Constitution using the approach adopted in Article 177. It creates a category of special seat members of either House of Parliament which becomes available whenever the outcome of the general elections results in one gender falling short of the one third minimum required under Article 81 (b) of the Constitution. The number of special seat members under this category would vary in each Parliament. It is expected, however, that the number of these special seat members would gradually reduce as the legislative and other measures contemplated in Article 27(8) of the Constitution continue to be implemented. Notably, the proposed amendment does not affect the other categories of members of Parliament under Articles 97 and 98 of the Constitution and therefore does not prejudice the rights of any person to stand for election or the right of a person to elect a person of his or her choice.

The enactment of this Bill will occasion additional expenditure of public funds.

Dated this day of 2011

***A.N. Other,
Minister***

Article 90 which it is proposed to amend:

Allocation of party list seats

- 90 (1) Elections for the seats in Parliament provided for under Articles 97(1) (c) and 98 (1) (b), (c) and (d), and for the members of county assemblies under 177 (1) (b) and (c), shall be on the basis of proportional representation by use of party lists.
- (2) The Independent Electoral and Boundaries Commission shall be responsible for the conduct and supervision of elections for seats provided for under clause (1) and shall ensure that—

- a) each political party participating in a general election nominates and submits a list of all the persons who would stand elected if the party were to be entitled to all the seats provided for under clause (1), within the time prescribed by national legislation;
 - b) except in the case of the seats provided for under Article 98 (1) (b), each party list comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed; and
 - c) except in the case of county assembly seats, each party list reflects the regional and ethnic diversity of the people of Kenya.
- (3) The seats referred to in clause (1) shall be allocated to political parties in proportion to the total number of seats won by candidates of the political party at the general election.

Article 97 which it is proposed to amend:

Membership of the National Assembly

97 (1) The National Assembly consists of—

- a). two hundred and ninety members, each elected by the registered voters of single member constituencies;
 - b). forty-seven women, each elected by the registered voters of the counties, each county constituting a single member constituency;
 - c). twelve members nominated by parliamentary political parties according to their proportion of members of the National Assembly in accordance with Article 90, to represent special interests including the youth, persons with disabilities and workers; and
 - d). the Speaker, who is an *ex officio* member.
- (2) Nothing in this Article shall be construed as excluding any person from contesting an election under clause (1) (a).

Article 98 which it is proposed to amend:

Membership of the Senate

98 (1) The Senate consists of:

- a) forty-seven members each elected by the registered voters of the counties, each county constituting a single member constituency;

- b) sixteen women members who shall be nominated by political parties according to their proportion of members of the Senate elected under clause (a) in accordance with Article 90;
 - c) two members, being one man and one woman, representing the youth;
 - d) two members, being one man and one woman, representing persons with disabilities; and
 - e) the Speaker, who shall be an *ex officio* member.
- (2) The members referred to in clause (1) (c) and (d) shall be elected in accordance with Article 90.
- (3) Nothing in this Article shall be construed as excluding any person from contesting an election under clause (1) (a).

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Time for Harvest: Women and Constitution Making in Kenya

From the bleak days of severe marginalization; days when words such as ‘women’s empowerment’ or ‘affirmative action’ were taboo in Kenya, *Time for Harvest: Women and Constitution Making in Kenya* captivantly traces women’s struggles to change their status, their lives and their entire destiny. It is a brilliant exposition of the sheer ingenuity, perseverance and tenacity to contribute to the attainment of an all inclusive Constitution that banishes, *inter alia*, gender discrimination in all spheres of life, including social, economic, cultural, and political spheres. In this way, it opens up massive space for Kenyan women to ‘exhale’.

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The book is suitable for the general reader as well as scholars in cultural and feminist studies. Students of politics, law, history, sociology, anthropology and literature who want to know the path travelled by Kenyans – women specifically – in constitution making will find it useful.

Wanjiku Mukabi Kabira is Associate Professor of Literature and Director, African Women Studies Centre, University of Nairobi, Kenya. She holds a PhD from University of Nairobi and an MA (Literature), from the University of Wisconsin, USA. She has published widely in the field of oral literature and in gender/women studies. She has been a leader in Women’s Movement for many years where she has consistently and passionately advocated for gender equality and equity in Kenya. She has mentored many women who have gone on to play critical roles in women’s empowerment and advancement. Her involvement with women issues inspired her to spearhead the establishment of the African Women’s Studies Centre in 2009.

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Lady Justice Nancy Baraza, Deputy Chief Justice, Republic of Kenya.

.....

I must commend and thank Professor Kabira for immortalizing women struggles for space at the negotiation table.

Patricia Kameri-Mbote, School of Law, University of Nairobi, Kenya.

.....

As we celebrate the struggles that women have waged in pursuit of freedom and the new Constitution, we also salute the labour that Professor Kabira invested in this project to enable us peep into the closed world of political intrigues that characterized the struggle for the new Constitution. We now know that the struggle was not easy; that the battle was won thanks to a female headed campaign with a male supported patience.

Godwin Siundu, Department of Literature, University of Nairobi, Kenya.

.....

*Kenya women’s journey towards equality and empowerment has been long and arduous. Hence, it is with great pride that we welcome **Time for Harvest** which chronicles women’s role in the making of the new constitution.*

Hon. Charity Kaluki Ngilu, EGH, MP., Minister for Water and Irrigation.



University of Nairobi Press

ISBN 9789966792105

ISBN 978-9966-792-10-5



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